

Report on the

# Department of Insurance

Montgomery, Alabama



**Department of  
Examiners of Public Accounts**  
50 North Ripley Street, Room 3201  
P.O. Box 302251  
Montgomery, Alabama 36130-2251  
[www.examiners.alabama.gov](http://www.examiners.alabama.gov)

*Ronald L. Jones, Chief Examiner*



**STATE OF ALABAMA**  
Department of  
**EXAMINERS OF PUBLIC ACCOUNTS**

Telephone (334) 242-9200  
FAX (334) 242-1775

**Ronald L. Jones**  
Chief Examiner

*Mailing Address:*  
P.O. Box 302251  
Montgomery, AL 36130-2251

*Location:*  
Gordon Persons Building  
50 North Ripley Street, Room 3201  
Montgomery, AL 36104-3833

October 19, 2011

Senator Paul Bussman  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Bussman,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Department of Insurance** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Department of Insurance**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald L. Jones', written in a cursive style.

Ronald L. Jones  
Chief Examiner

Examiners:  
Daniel Dupree  
Robin Hutcheson



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# **PROFILE**

## **Purpose / Authority**

Act 1860-136 created the requirement that any agency or agents of any fire, river or marine insurance company must obtain a certificate of authority from the controller of the state in order to conduct business in Alabama.

In 1923 the name was changed to Bureau of Insurance.

Act 1915-730 made the Department of Insurance a separate entity.

Act 1951-234 reorganized the agency combining the functions of the Bureau of Insurance, the Bureau of Rates of the Department of Commerce, and the Office of Fire Marshal.

Act 1971-407 revised and consolidated the laws relating to the insurance business.

Act 97-445 added regulation of service contracts sold in Alabama

Act 2002-74 added regulation of the sale of pre-need funeral or cemetery merchandise and services to the Department's responsibilities.

Act 2011-637, which will be effective January 1, 2012 added the licensing of independent insurance adjusters.

The creation and operation of the Department is primarily addressed in the *Code of Alabama 1975*, Sections 27-2-1 through 27-2-55.

The Department of Insurance carries out the following duties:

- **Insurance Companies and Insurance Representatives** – Act 234, Acts of Alabama 1951 created the Department of Insurance to regulate the insurance industry in Alabama. The Department licenses and regulates insurance companies and insurance representatives of various types under authority of Title 27 of the *Code of Alabama 1975*.

The 1994 federal *Insurance Fraud Prevention Act*, Act 18 USC 1033 places the Alabama Department of Insurance and the insurance regulatory agencies of other states in closer cooperation with federal authorities to combat insurance fraud.

- **Insurance Companies/Funeral Homes/Cemeteries in Receivership** – Act 1039, Acts of Alabama 1975 codified in the *Code of Alabama 1975*, Sections 27-2-50 through 27-2-55 establishes and provides for the operations of a Receivership Division within the Department of Insurance to be responsible for managing or liquidating financially impaired or insolvent insurance companies. Chapter 32 of Title 27 addresses the rehabilitation, reorganization, conservation and liquidation of individual insurance companies. The Act was amended in 2002 to include funeral homes and cemeteries.

- **Pre-need Funeral or Cemetery Funeral Merchandise and Services** – Act 2002-74, Acts of Alabama 2002, codified as the ***Code of Alabama 1975***, Sections 27-17A-1 through 27-17A-56 provides for regulation for the sale of pre-need funeral or cemetery merchandise and services.
- **Service Contracts Sold to Alabama Consumers** – Act 97-445, Acts of Alabama 1997, codified as the ***Code of Alabama 1975***, Sections 8-32-1 through 8-32-12 provides for the regulation of service contracts sold to Alabama consumers.

### **Fire Marshal's Office**

- **Enforcement of Laws Relating to Fire** – Act 701, Acts of Alabama 1919, created the State Fire Marshal's Office, which by law is a branch of the Department of Insurance. The Fire Marshal is responsible for the enforcement of laws relating to fire; adequacy of fire exits; and suppression and investigation of arson. The ***Code of Alabama 1975***, Sections 36-19-1 through 36-19-44 govern the principal duties and responsibilities of the Fire Marshal regarding fire.
- **Sale and Use of Fireworks** – The Fire Marshal regulates the storage, sale and use of fireworks under authority of the ***Code of Alabama 1975***, Section 8-17-210 through 8-17-226.
- **Storage, Sale, and Commercial Use of Explosives** – The Fire Marshal regulates the storage, sale, and commercial use of explosives under authority of the ***Code of Alabama 1975***, Sections 8-17-240 through 8-17-256.
- **Fire Sprinkler Systems** – The Fire Marshal regulates the sale and installation of fire sprinkler systems under authority of the ***Code of Alabama 1975***, Section 34-33-1 through 34-33-12.
- **Fire Alarm Systems** – The Fire Marshal permits and regulates Fire Alarm contractors under authority of the ***Code of Alabama 1975***, Section 34-33A-1 through 34-33A-13.
- **Reduced Cigarette Ignition Propensity Standards** – The Fire Marshal files the written certifications from manufacturers attesting compliance with the statutes; that each cigarette meets laboratory control and quality performance standards; and all information required is on the packaging under authority of the ***Code of Alabama 1975***, Section 8-17-270 through 8-17-281

### **Premium Tax**

- In addition to its regulatory duties, The department collects and distributes an insurance premium tax from companies authorized to transact insurance business in Alabama, as provided by the ***Code of Alabama 1975***, Sections 27-4A-1 through 7. Distribution of the premium tax is to the State General Fund, Education Trust Fund and the Special Mental Health Trust Fund based on the type business taxed. Details are included in the financial section of this report.





Licensees	Current Active Licensees as of 8-22-11	
	Adjuster	13,653
	Preneed Sales Agent	1,102
	Service Representative	668
	Surplus Line Broker	1,947
	Reinsurance Intermediary	10
	Producer	103,911
	Title Insurance Agent	735
	Managing General Agent	30
	Temporary Health	902
	Temporary Casualty	21
	Temporary Personal Lines	12
	Temporary Life	1,837
	Temporary Variable	1
	Temporary Automobile	10
	Temporary Industrial Fire	39
	Temporary Fire	21
	Total	124,899
	Fire Marshal's Office Permits / Certifications issued in 2010	
	Fireworks Permit	1,335
	Sprinkler Permit	176
	Fire Pump Test Permit	308
	Fire Alarm Permit	200
	Blaster Certification	312
	Fire Standard Compliant Cigarette Certification	135
	Total	2,466
	Reciprocity	Any person who applies for an insurance producer license in Alabama who was previously licensed in good standing for the same lines of insurance in another state is not required to complete pre-licensing education and is not required to be examined. The applicant must be currently licensed in the other state, or the application must be received within 90 days of the cancellation of the applicant's previous license.
A person licensed as an insurance producer in another state who moves to Alabama is required to apply for an Alabama license within 90 days of establishing legal residence.		
Blaster certifications may be granted to a person certified in another state, provided that the requirements for certification in that state are equivalent to, or more stringent than, those in Alabama, as determined by the State Fire Marshal. The State Fire Marshal's office issues a blaster certification to persons who meet this requirement and pay the \$100 fee required of all applicants. There are no state-specific agreements.		
Code of Alabama 1975, Sections 8-17-243, 27-7-29.1		

<b>Renewals</b>	<p><b>Insurance</b>  Adjuster, Producer, and Service Representative:</p> <ul style="list-style-type: none"> <li>• Biennial renewal</li> <li>• Adjuster and Producer-Business Entity licenses expire December 31</li> <li>• Producer-Individual and Service Representative licenses expire at the end of the licensee's birth month</li> </ul> <p>Surplus Line Broker, Reinsurance Intermediary, Title Insurance Agent, Managing General Agent:</p> <ul style="list-style-type: none"> <li>• Annual Renewal</li> <li>• Licenses expire on December 31</li> </ul> <p>Pre-need Sales Agent licenses renew annually and expire on June 1.</p> <p><b>Fire Marshal's Office</b></p> <ul style="list-style-type: none"> <li>• Fireworks permits renew annually and expire on December 31</li> <li>• Sprinkler and fire alarm permits renew annually and expire on September 30</li> <li>• Fire pump testing permits and blaster certifications renew annually and expire one year from the date of issue</li> <li>• Fire standard compliant cigarette certification expires 3 years from the date of issue</li> </ul> <p>On-line renewal is available for all Insurance licenses, and for fireworks permits.</p>
<b>Continuing Education</b>	<p>Insurance producers and service representatives are required to complete 24 hours of continuing education biennially. Three hours must be in insurance producer ethics or business practices.</p> <p><i>Code of Alabama 1975, §27-8A-1</i></p>
<b>Employees</b>	146
<b>Legal Counsel</b>	<p>The following employees of the Department of Insurance are assistant attorneys general:</p> <p>General Counsel – Ralph R. Norman, III  Chief Counsel – J. Fairley McDonald, III  Associate Counsels – Terry L. Raycraft, Ryan A. Donaldson, William L. Rodgers, Jr., Lucie McLemore, Kathleen Healey, and Dennis M. Wright</p>
<b>Subpoena Power</b>	<p>Subpoena of witnesses and records.</p> <p><i>Code of Alabama 1975, §27-2-26</i></p>
<b>Internet Presence</b>	<p><a href="http://www.aldoi.gov">http://www.aldoi.gov</a> - Information / Services include:</p> <ul style="list-style-type: none"> <li>• Contact information</li> <li>• License renewal</li> <li>• Link to online continuing education</li> <li>• Licensee search</li> <li>• Complaint filing</li> <li>• Forms</li> <li>• Rules / Regulations / Laws</li> </ul>

<b>Attended Board Member Training</b>	<p>Attended during the last four years:</p> <ul style="list-style-type: none"> <li>1 – Receiver</li> <li>1 – Programmer Analyst</li> <li>1 – IT Systems Specialist Associate</li> <li>1 – Insurance Examinations Supervisor</li> <li>1 – Insurance Examiner IV</li> <li>2 – Senior Accountants</li> <li>1 – Attorney III</li> </ul>
<b><u>Financial</u></b>	
<b>Source of Funds</b>	<p>Insurance licensing and regulatory fees</p> <p>Fees for audits and examinations of insurance companies</p> <p>Fees for service contract registrations</p> <p>Permits / Certifications issued by the State Fire Marshal</p>
<b>State Treasury</b>	<p>Yes, through the following funds:</p> <ul style="list-style-type: none"> <li>Fund 0341 – Examiners Revolving Fund</li> <li>Fund 0342 – State Fire Marshal’s Fund</li> <li>Fund 0921 – Insurance Department Fund</li> <li>Fund 0934 – Service Contract Fund</li> <li>Fund 1233 – Reduced Cigarette Ignition Propensity Standards Fund</li> </ul>
<b>Required Distributions</b>	<p>Act 2009-550 required the Department of Insurance to transfer \$1,000,000 to the state’s General Fund in FY 2010. There is no such requirement for FY 2011 or 2012.</p>
<b>Unused Funds</b>	<p>Fund 0341 – Examiners Revolving Fund: Unused funds are retained at fiscal year-end.</p> <p>Fund 0342 – State Fire Marshal’s Fund: Unused funds are retained at fiscal year-end.</p> <p>Fund 0921 – Insurance Department Fund: The unencumbered and unexpended balance in the fund at the end of each fiscal year in excess of 25 percent of the amount appropriated for that fiscal year must be transferred to the state’s General Fund</p> <p>Fund 0934 – Service Contract Fund: Unused funds are retained at fiscal year-end.</p> <p>Fund 1233 – Reduced Cigarette Ignition Propensity Standards Fund: Unused funds are retained at fiscal year-end.</p> <p><b><i>Code of Alabama 1975</i></b>, Sections 27-2-25, 8-17-255, 27-2-39, 8-32-3, 8-17-278</p>

## SIGNIFICANT ISSUES

### Significant Issue 2011 – 01

**Act 2011-637, which will go into effect January 1, 2012 provides for the licensing of independent insurance adjusters.** Independent insurance adjusters are self-employed contractors; not insurance company employees. Typical job duties include investigating claims by inspecting property damage, interviewing the claimant and consulting hospital and police records. Adjusters then determine what the consumer's insurance policy covers and how much the claimant should be paid. Insurance adjusters also negotiate settlements and authorize the insurance payments to claimants.

Act 2011-637 sponsored by Senator Blackwell provides for the qualifications and procedures for the licensing of independent insurance adjusters and apprentice independent adjusters, and for the registration of emergency independent adjusters.

### Significant Issue 2011-02

**Act 2011-536, sponsored by Representatives Wren, Canfield, and Faust ,effective June 9, 2011** provides and adopts the Interstate Insurance Product Regulation Compact which will permit uniform approval of individual and group annuity, life, disability income, and long-term care insurance policies. The act allows Alabama to become a member of the Interstate Insurance Product Regulation Commission, with the Commissioner of Insurance designated to serve as the representative of Alabama to the commission.

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

- To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products
- To develop uniform standards for insurance products covered under the compact
- To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states
- To give appropriate regulatory approval to those producer filings and advertisements satisfying the applicable uniform standards
- To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact
- To create the Interstate Insurance Product Regulation Commission and
- To perform these and such other related functions as may be consistent with the state regulation of the business of insurance

### Significant Issue 2011-03

**Act 2011-537 sponsored by Representative Wren and Canfield establishes the Surplus Lines Insurance Multi-State Compliance Act.** When insurance is not available from Alabama licensed companies, it can be obtained from unlicensed “surplus line” companies through a licensed insurance broker, upon approval of the Department of Insurance. The availability of surplus lines insurance provides a means to insure hard-to-place risks. The Department of Insurance stated that in 2010, Congress enacted the Nonadmitted and Reinsurance Reform Act of 2010. Under this federal act, only

the “home state” of an insured is permitted to regulate and tax surplus line insurance transactions, but it also permits the states to enact multistate agreements to allow for the collection and sharing of taxes on multistate transactions.

According to National Association of Insurance Commissioners (NAIC), the compact addresses a number of issues that have been a concern for Surplus lines brokers, who, through their trade organization the National Association of Professional Surplus Lines Offices (NAPSLO), have made numerous complaints to regulators about encountering inconsistencies among state surplus lines tax laws.

Among the complaints named by NAPSLO is the lack of a universal formula employed to allocate taxes among the states, and on occasion the allocation method in one state not being accepted in another state. NAPSLO also indicated that surplus lines brokers may also encounter frustration when attempting to determine how to pay taxes to states whose statutes are silent on the out-of-state broker's obligation to pay or remit a tax. Also, taxing authorities vary across state lines, with departments of insurance sometimes responsible for collecting the tax and other revenue authorities responsible in others.

According to NAIC, the Surplus Lines Insurance Multi-State Compliance Act, should alleviate some of the concerns. The purposes of this compact are:

- To implement the express provisions of Title V, Subtitle B, the Non-Admitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act
- To protect the Premium Tax revenues of the Compacting States through facilitating the payment and collection of Premium Tax on Non-Admitted Insurance
- To protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers
- To provide for allocation of Premium Tax of Non-Admitted Insurance of Multi-State Risks among the States in accordance with uniform Allocation Formulas to be developed, adopted, and implemented by the Commission
- To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the States and promote and protect the interest of Surplus Lines Licensees who assist such insurers and Surplus Lines Insurers, thereby ensuring the continued availability of Surplus Lines Insurance to consumers
- To streamline regulatory compliance with respect to Non-Admitted Insurance placements by providing for exclusive single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, in accordance with rules to be adopted by the Commission
- To establish a Clearinghouse for receipt and dissemination of Premium Tax and Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks, in accordance to rules to be adopted by the Commission
- To improve coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Non-Admitted Insurance.
- To adopt uniform Rules to provide for Premium Tax payment, reporting, allocation, data collection, and dissemination for Non-Admitted Insurance of Multi-State Risks and Single-State Risks, in accordance with rules to be adopted by the Commission

- To adopt uniform mandatory rules with respect to regulatory compliance requirements for foreign insurer eligibility requirements and surplus lines policyholder notices
- To establish the Surplus Lines Insurance Multi-State Compliance Compact Commission
- To coordinate reporting of Clearinghouse Transaction Data on Non-Admitted Insurance of Multi-State Risks among Compacting States and Contracting States
- To perform these and other such related functions as may be consistent with the purposes of the Surplus Lines Insurance Multi-State Compliance compact.

(Source: at [http://www.naic.org/documents/topics\\_surplus\\_multi\\_state.pdf](http://www.naic.org/documents/topics_surplus_multi_state.pdf))

#### **Significant Issue 2011-04:**

**The Department of Insurance is charging fees without establishing an administrative rule setting the specific amount of the fee.** Because the law sets upper limits on these fees but does not set the actual amount that will be charged, the Department of Insurance must decide the specific amount that will be charged. A review of department records showed that the fees are consistently charged at the maximum amount allowed by law. That policy meets the definition of an administrative rule found in the state's Administrative Procedure Act, which is applicable to nearly all state agencies. Although the Department of Insurance is made exempt from the provisions of the state's Administrative Procedure Act within the Administrative Procedure Act, some of the laws administered by the Department of Insurance include a requirement to make rules in accordance with the Administrative Procedure Act. None of the laws administered by the Department of Insurance include the definition of a rule. In absence of such a definition within the laws administered by the Department of Insurance, we believe that the definition of a rule found in the state's Administrative Procedure Act is meant to apply generally to state agencies and should apply to the rules of the Department of Insurance generally. The Administrative Procedure Act in the *Code of Alabama 1975*, Section 41-22-3(9) defines a rule as, "Each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency..."

The following fees are at issue:

The *Code of Alabama 1975*, Section 8-17-250(b) states, "The office shall establish a fee ***not to exceed*** \$50 to be paid by each applicant requesting a variation." (Emphasis added)

The *Code of Alabama 1975*, Section 27-17A-11(d)(1) states, "An application to the commissioner for an initial certificate of authority shall be accompanied by an application fee in an amount ***to be determined by the commissioner, not to exceed*** one hundred fifty dollars (\$150). Thereafter, each annual application for renewal of a certificate of authority shall be accompanied by the appropriate fee as determined by the commissioner not to exceed seventy-five dollars (\$75)." (Emphasis added)

The *Code of Alabama 1975*, Section 27-17A-11(d)(2) states, "...Each branch registrant may operate under the certificate of authority of the common business enterprise upon the payment of a fee ***established by the commissioner not to exceed*** one hundred fifty dollars (\$150) accompanying the application on April 1 annually." (Emphasis added)

The *Code of Alabama 1975*, Section 27-17A-11(h) states, "In addition to any other penalty that may be provided for under this article, the commissioner may levy a fine ***not to exceed*** fifty dollars (\$50) per day for each day the certificate holder fails to file its annual statement, and the commissioner may

levy a fine *not to exceed* fifty dollars (\$50) per day for each day the certificate holder fails to file the statement of activities of the trust." (Emphasis added)

The *Code of Alabama 1975*, Section 27-17A-11(j) states "The commissioner may authorize the transfer of certificates of authority and *establish fees* for the transfer in an amount *not to exceed* one hundred dollars (\$100)." (Emphasis added)

"The *Code of Alabama 1975*, Section 8-8-15(b) states, "'Commencing January 1, 1999, the bad check charge in subsection (a) shall increase by one dollar (\$1) per year through January 1, 2003, at which time the *maximum* bad check charge shall be thirty dollars (\$30)." (Emphasis added)

## STATUS OF PRIOR FINDINGS

### Prior Significant Issue 2000-02:

**The Department of Insurance is not Carrying Out its Duties to Determine Insurance Agents/Producers Criminal Histories, as Required by State Law and by the Insurance Fraud Prevention Act, Act 18 United States Code 1033, as Effectively as Possible.** In 1994, Congress enacted the Insurance Fraud Act to prohibit for life the participation in insurance business by certain felons, unless granted a written waiver from the licensing state's insurance regulatory agency. The Act further prohibits any entity involved in the insurance business from "willfully" permitting such participation by a convicted felon. The Act also makes it a criminal offense to give false information to state insurance officials.

In addition to the federal law, state law provides that the Commissioner of Insurance "shall not issue, continue, or permit to exist any agent, broker, solicitor, managing general agent, or service representative who is not "of good moral character and not have been convicted of a felony nor of any crime involving moral turpitude, unless fully pardoned with restoration of civil rights".

The Department previously utilized the National Crime Information Center (NCIC) terminal at the State Fire Marshal's Office to compare each new applicant criminal history with the application for licensure. In 1996, we reported that the Agents Licensing Division Director estimated that the Division received 1,300 applications per week for licensure, of which approximately 500 were first time applicants. Of the 500, approximately 37% were found to have provided false information or made an omission on their applications regarding criminal charges against them. According to department staff, the Alabama Criminal Justice Information Center later notified the Department that this use of the Fire Marshal's NCIC terminal was improper, and the Department ceased checking all first time applicants for licensure.

Currently, the Department is limiting its criminal history inquiries to applicants who voluntarily provide information of criminal convictions in their applications for licensure and to agents or employees for whom insurance companies have become aware and have reported to the Department of Insurance. When criminal histories are required, the applicant agent, or employee is required to furnish them. Where willing admission has been made, the applicant is advised that he or she is ineligible for licensing and is offered the option of requesting a waiver hearing.



Under these conditions, we conclude that there are potentially a large number of agents being licensed and continuing to be licensed who have not properly reported their criminal histories to the Department of Insurance, and that the Department is not as effective in monitoring the criminal backgrounds of its licensees as it should be.

**STATUS (2007)** – The Department believes that with the Insurance Fraud Prevention Act, 18 U.S. Code 1033, the insurers are adequately screening applicants prior to submitting applications to the Department. The Department has a specific reference to the Federal Code on the license application. The Department is utilizing AlaCourt, an Internet database search program administered by the Administrative Office of Courts, to conduct a search of public records on all new and renewal resident applicants. The database has a history of all court cases in Alabama that resulted in either an acquittal or conviction. According to the Department of Insurance, less than 1% of the applicants applying for licensure have felony convictions according to AlaCourt. According to the department, six employees spend one hour each day in this effort. Although ten states are conducting preliminary background checks, the NAIC is not actively seeking legislation to require states to conduct background checks.

Because the background check through AlaCourt does not include convictions nationwide, we consider the check less effective than could reasonably be accomplished by the department.

#### **Current Status**

The condition continues to exist. Upon inquiry the department replied that, “While the Department concurs with the factual findings of the examiner, we respectfully disagree with the conclusion that we are not effectively carrying out our duty. With increased awareness of the duties and responsibilities placed back on insurers under the Insurance Fraud Prevention Act, 18 U.S. Code 1033, we believe insurers are doing a better job of screening their applicants before submitting them to us, plus we have added specific references to the federal act on our license applications. Additionally, since 2005, we have conducted a limited search of public records on all new resident applicants for license and since 2006 this search was also conducted on all resident renewal applications.”

“Additionally, the 2011 Legislature passed a new Independent Adjuster licensing law (Act 2011-637), which includes authority to conduct background investigations, to include collecting fingerprints of licensees and obtain a state and FBI criminal history report. It is anticipated that once this process is implemented and working for independent adjuster licensees we will be better positioned to implement a similar law for insurance producers.”

#### **Prior Significant Issue 2000-03:**

**Insurance Fraud Unit Not in Place in Alabama and Three Other States** – The Department of Insurance has unsuccessfully submitted insurance fraud legislation since 1999 to provide for the crime of insurance fraud and specifically authorize the department to investigate suspected fraud and provide civil and criminal penalties for violations. The insurance fraud bills introduced in the 2003 legislative session were sponsored by Representative Mike Hill (HB 271) and Senator Zeb Little (SB 137).

**STATUS (2007) – Alabama is one of three states (Oregon and Virginia are the other two) without insurance fraud law.** Insurance fraud bills were introduced in the 2006 and 2007 regular sessions – sponsored by Representative Hill (HB 627- 2006RS and HB 333-2007RS) without success. The department has created an Insurance Fraud Division using funds from a court order. The division employs one attorney from the department’s Legal Division and two investigators. After a

departmental reorganization in 2005, insurance consumer specialists were placed in the Insurance Fraud Unit. Alabama remains without a law to provide for the crime of insurance fraud and specifically authorize the department to investigate suspected fraud and provide civil and criminal penalties for violations.

#### **Current Status**

The condition continues to exist. Upon inquiry, the department replied that the Alabama Legislature has steadfastly refused to pass legislation implementing an Insurance Fraud law in this state or to create an Insurance Fraud Unit within the Department of Insurance. Efforts to implement such a unit absent legislative authority have not been successful. Currently, the staff previously assigned to the DOI's Anti-Fraud Division are assigned to the Legal Division and focus on cases involving licensee misconduct. A scaled-back Insurance Fraud bill was introduced in the 2011 regular session as House Bill 460 by Representative McMillan and Senate Bill 354 by Senator Brooks, but neither bill passed.

#### **Prior Significant Issue 2000-04:**

##### **The Department Lacks Jurisdiction Over Third Party Administrators of Insurance Programs –**

The Alabama Insurance Code provides for specific regulation of insurance companies, insurance agents and brokers, managing general agents, and adjusters. However, there is no provision providing specific regulation of “third party administrators”. Third party administrators are persons or organizations that directly or indirectly solicit or effect coverage or, underwrite, collect premiums, investigate claims, or settle claims with respect to life insurance, health insurance, or annuities. For example, Blue Cross/Blue Shield (BCBS) is the third party administrator for the State Employee's Insurance Plan. The Department of Insurance has no authority over BCBS activities in this capacity because BCBS is hired by the State of Alabama to administer the plan, not to provide insurance directly. The United States Department of Labor, through the Office of Pension and Welfare Benefits, is responsible for administration and enforcement of self-funded insurance programs (The United States Code Title 29, Chapter 18, Employee Retirement Income Security Act of 1974).

#### **Current Status**

The condition continues to exist. Upon inquiry, the department replied that, “The Department concurs with the findings of the examiner. We have drafted legislation that can be introduced in a future session of the Legislature.”

#### **Prior Significant Issue 2000-05**

##### **The Department Does Not Have Effective Authority to Properly Implement its Legally**

**Required Program for Regulation of Service Contract Provider Agents** – According to department staff, Act 97-445, codified as *Code of Alabama 1975*, Sections 8-32-1 through 8-32-12, was established to regulate the operations of service contract providers; however, the statute has no provision for the registration/licensure of service contract provider representatives. Under current law, anyone can attempt to sell service contracts on anything to Alabama consumers. Since the Department is not authorized to register or license service contract provider agents, the Department does not have a good means of exercising regulation. Unsuccessful legislation was sponsored in the 2000 session by Representative Blain Galliher (HB 590) and Senator George Clay (SB 413) to remedy this condition.

#### **Current Status**

The condition continues to exist. Upon inquiry, the department replied that, “The Department concurs with the findings of the examiner. We have drafted legislation that can be introduced in a future session of the Legislature.”

**Prior Significant Issue 2005-01:**

**Implementation of the Alabama Pre need Funeral and Cemetery Act is Using More Departmental Resources than Originally Expected.** Act 2002-74, *Acts of Alabama 2002*, codified as the *Code of Alabama 1975*, Section 27-17A-1 through 27-17A-56 provides for the regulation of the sale of pre-need funeral or cemetery merchandise and services. In attempting to implement the regulation of pre-need funeral and cemetery service and product providers, the department has predominantly utilized the services of an attorney and a consumer specialist as well as several departmental insurance company financial examiners and, on a limited basis the one special investigator employed by the department. Department staff, in attempting to determine who needs regulation has discovered that there are approximately 462 funeral homes operating in Alabama as of July 1, 2005.

Funeral homes operating in Alabama are regulated by the Board of Funeral Service. The board has provided the Department of Insurance with a directory of its licensees, but had declined a request by the Department of Insurance to have board licensees identify themselves as either pre need or non-pre need providers on their annual renewal forms and to subsequently provide that information to the Department of Insurance. The Executive Secretary of the Board of Funeral Service stated at the board's October 2, 2003 sunset hearing that approximately 1/3 of the funeral home operators in Alabama have discontinued offering pre need services and products rather than comply with the requirements of the pre-need Funeral and Cemetery Act, and that the board on the advice of legal counsel did not solicit the funeral home operator's status as a pre-need provider on its renewal forms. The reason given for this position was that it was not the board's responsibility to administer statutes for which the Department of Insurance is responsible.

In attempting to identify cemeteries that might be subject to regulation under the Pre need Act, the Department learned that there is no central registry of cemeteries. Based on research at the Department of Archives & History, the Department of Public Health, and various courthouses, department staff estimated the number of cemeteries located in Alabama at approximately 43,000, many of which would be exempt from the Act. Cemeteries owned/operated by churches, governments, families, etc., are exempt from the Act's requirements.

The department is aware of third-party funeral need providers (casket sales by non-funeral homes, florists selling flower arrangements, reception booklets, etc., as well as caskets). The number of these third party providers is as yet undetermined.

The department is also aware of Internet funeral need providers and is again unable at this time to determine the number of such service providers that should be regulated.

Department staff stated that initial examination of financial records at funeral homes has disclosed large variances among funeral homes in the nature and extent of records and cited occasional reluctance to grant access to the records.

**STATUS (2007)** – According to the department's staff, the department has experienced difficulty with its regulatory activities under the current law due to weaknesses in the law, the lack of funding, and the resistance of some in the industry to the law. The department stated that there are inconsistencies in the law and the law is vague regarding enforcement. According to some consumer

groups, Alabama has one of the weakest laws in the nation (along with Florida and Hawaii). Below are some of the department's stated major concerns with the law.

**The concepts of pre-need funeral contracts and pre need cemetery contracts are treated differently.** The department's position is that the law should treat the two as nearly alike as possible for ease of understanding, enhanced consumer protection, and for ease and consistency of enforcement. The law should strengthen consumer protection in both areas. The department states that cemeteries and funeral homes offer pre-need certificates to provide many of the same services and funeral merchandise and that the trust provisions for the certificates should therefore be the same.

**The law does not require establishments to place in trust the monies received as contract payments until 30 days after the final payment is received.** Some contracts are paid in a single payment, but some contracts are paid in installments over several months, if not years. During that period, there is no trust "protection" for consumers who are making periodic payments. An operator selling several pre-need contracts will incur a large liability that the operator may not be able to meet with available funds when the contracts are finally paid out.

**There is no funding mechanism in the law for regulatory functions.** The department does not have an adequate and dependable funding source to allow for more frequent examinations and investigative activities. The department is understaffed for the workload generated by pre-need sales/services. Currently there are four examiners assigned to perform pre-need examinations; one insurance consumer specialist II, and an Administrative Support Assistant II. Expenses (excluding payroll and other departmental costs) were \$156,199 in fiscal year 2007 (as of August 2007), and \$76,016 for fiscal year 2006. Expenses consist of upkeep for cemeteries; legal fees; travel; newspaper notices and miscellaneous expenses.

**The law does not provide for a "guaranty fund" type arrangement intended to furnish some level of financial protection to pre-need contract buyers in the event an operator becomes insolvent.** The trust requirements are not sufficient. In the event of insolvency, pre-need money collected in advance is not there.

**The law allows for receivership, an insolvency mechanism normally applied to insurance companies, but the receiver's options are limited.** The law limits the receiver of an insolvent company to liquidation or dissolution instead of rehabilitation (continuing operations while attempting to place the company on sound financial footing). While the companies are in receivership they cannot engage in pre-need sales. Liquidation or dissolution often results in little money to pay creditors or pre-need contract holders. As of August 2007, there were seventeen (17) funeral homes and cemeteries in receivership.

**There appear to be gaps in enforcement mechanisms available under the law.** Many of the enforcement sections only apply to establishments having a certificate of authority, not to establishments that have never applied for one or those that have let the certificates lapse. The criminal penalties (Class B misdemeanor) should be strengthened to classify some violations, particularly financial ones (willful failure to trust or divert trusted funds) as felonies.

**Although not strictly limited to pre-need, there should be legislation allowing for abandonment or transfer of cemeteries to local governments, with a corresponding obligation on local governments to maintain abandoned or transferred cemeteries.** Cemeteries are abandoned, and the state is responsible for maintaining them due to lack of clear records of ownership, and lack of a mechanism allowing the responsibility to be shifted.

### **Current Status**

The condition continues to exist. Upon inquiry, the department replied that, “The Department concurs with the findings of the examiner. This department has been involved with the industry in drafting revisions to the law. These revisions would have addressed some of the issues and would have increased the criminal penalties. Although the bill was not introduced in the 2011 session, it has been introduced in several prior sessions.” According to information from Receivership Division staff, as of September 30, 2011, there were 6 cemeteries and 9 insurance companies in receivership.

### **Prior Finding 2007-01:**

In the most recent previous examination, we found that the State Fire Marshal had created fees within two administrative rules associated with fire protection sprinkler systems regulation for which there was insufficient statutory authority. One fee is now collected in accordance with the law, but the rule has not been amended to show the correction. The other fee continues to be collected and the rule remains unchanged. The prior findings are as follows:

1. **Permit Renewal Grace Period and Fee** – The application form submitted to the State Fire Marshal for permit to practice as a fire protection sprinkler contractor provides for a “renewal fee past November 1<sup>st</sup>” of \$200. However, statutes prohibit renewal past September 30, and the fee therefore has no statutory basis. By law, failure to renew by September 30 must result in lapse of permit, which can later be reinstated by making application for a new permit and paying a new permit fee of \$100.

The *Code of Alabama 1975*, Section 34-33-7 provides that, “The State Fire Marshal's permit shall expire annually at midnight on September 30. At least 30 days prior, the fire protection sprinkler contractor must submit a renewal application. A renewal fee must be submitted with the application. Failure to renew the permit prior to the expiration shall cause the permit to be null and void as of the expiration date, and it shall be unlawful under this chapter for any individual, partnership, corporation, association, or joint venture to engage in the business of installing, repairing, altering, adding, maintaining, or inspecting a fire protection sprinkler system without a valid State Fire Marshal's permit. **The permit may be reinstated by making application as before, and payment of the fee; however, until such time as a new permit is issued, it shall be unlawful for the fire protection sprinkler contractor to engage in installing, repairing, altering, adding, maintaining, or inspecting fire protection sprinkler systems.**”

The *Code of Alabama 1975*, Section 34-33-7 provides that, “Any individual, partnership, corporation, association, or joint venture desiring to engage in the business of fire protection sprinkler contractor shall submit to the State Fire Marshal on standard forms provided by the State Fire Marshal a completed application. **The applicant shall include a fee of \$100.00 when making the application.**”

**Current Status- Item 1:** The discrepancy has been resolved. The Fire Marshal now charges a \$100 renewal fee and the department has modified its administrative rule to incorporate the change.

2. **Skilled Worker Exemption** – The State Fire Marshal established administrative rule 482-2-103, which provides for a skilled worker exemption certificate fee of \$100 per pump per year. Sprinkler system owners are specifically exempted from the sprinkler system permit law relative to skilled workers in their employ who install and maintain sprinkler systems on their premises.

Although the department appears to have authority to define the qualifications of a skilled worker under the exemption, there is no apparent statutory authority for the department to require skilled workers to be certified for a fee in order to implement the skilled worker exemption.

The *Code of Alabama 1975*, Section 34-33-3 provides that “...Nothing in this chapter, however, shall be construed to apply to fire protection system owners who employ registered professional fire protection engineers, and ***skilled workers*** who regularly and routinely design, install, repair, alter, add to, maintain and inspect sprinkler systems on and within the premises of their employer, provided such systems are for the owner’s use only.

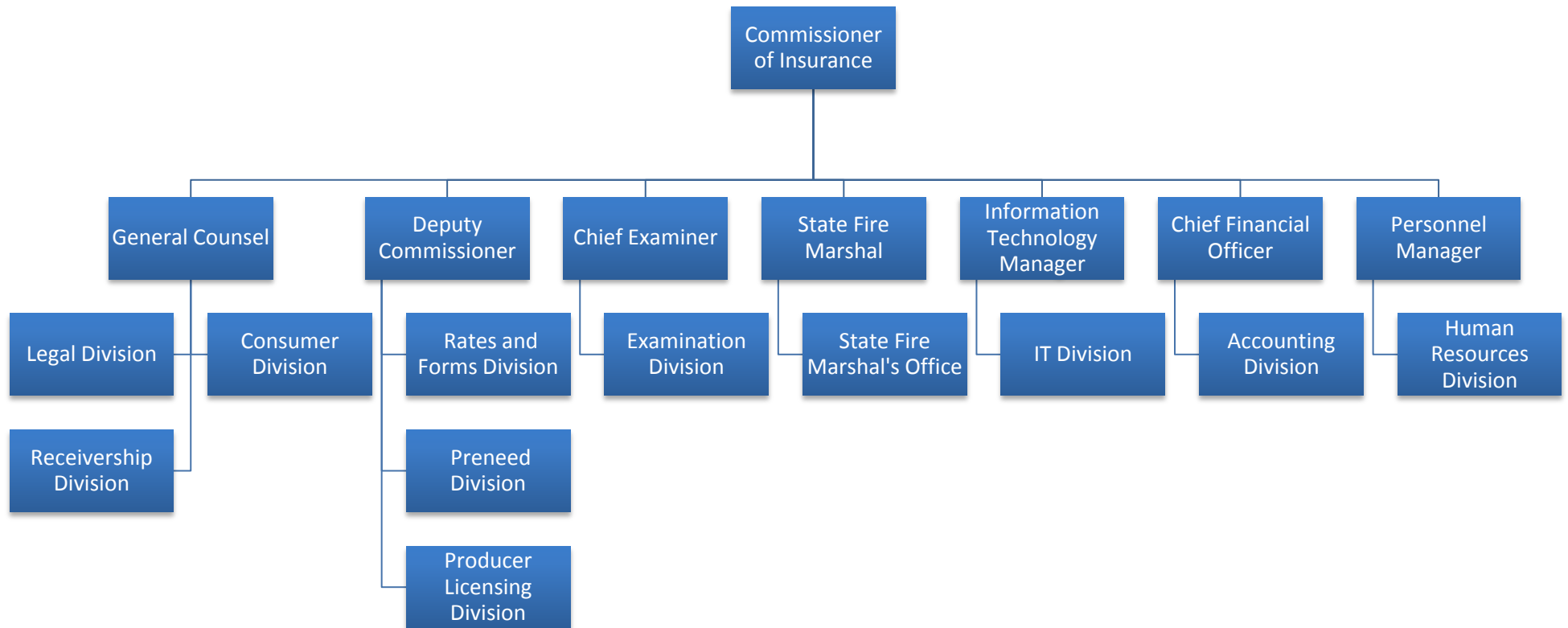
**Current Status – Item 2:** The Fire Marshal continues to charge this fee.

The Department of Insurance contends that the Fire Marshall has general authority under the *Code of Alabama 1975*, Section 36-19-2(3) to charge a fee to defray the expenses of certifying that a “skilled worker”, as provided in the exemption, is sufficiently skilled to regularly and routinely design, install, repair, alter, add to, maintain and inspect sprinkler systems on and within the premises of their employer. Section 36-19-2(3) provides that, “The Fire Marshal and his duly appointed deputies and assistants shall have the specific duty of enforcing the laws, regulations and ordinances of the state and the provisions of this article throughout the state in matters relating to:” “(3) Installation and maintenance of automatic and other fire alarm systems and fire extinguishing equipment;...”

We do not question the Fire Marshall’s authority under the *Code of Alabama 1975*, Section 36-19-2(3) but contend that the authority to administer a statutory power or duty is separate from the authority to charge an associated fee. An associated fee must be specifically authorized or implied in the law. (See opinion of the Attorney General 2002-193). We note that the fee in question is nowhere mentioned or implied in the *Code of Alabama 1975*, Section 36-19-2(3) or elsewhere.

Also, with respect to fire sprinkler systems, the applicable law to be enforced by the Fire Marshall is the *Code of Alabama 1975*, Title 34, Chapter 33. We note that the *Code of Alabama 1975*, Section 34-33-3 states that, “**Nothing in this chapter, however, shall be construed to apply to** [emphasis supplied] fire protection system owners who employ registered professional fire protection engineers, and **skilled workers** [emphasis supplied] who regularly and routinely design, install, repair, alter, add to, maintain and inspect sprinkler systems on and within the premises of their employer, provided such systems are for the owner’s use only.” Therefore the exempted skilled workers are exempt from any fee imposed by application of the fire sprinkler systems licensing/regulatory statutes.

# ORGANIZATION



**Accounting Division** – The Accounting Division is responsible for providing timely and accurate state financial services for the Department of Insurance. The Division accounts for receipts and disbursements associated with the general operations of the Department. Responsibilities of the Accounting Division include accounting for, analyzing, and reporting on annual departmental receipts distributed to the General Fund, Special Education Trust Fund and various Insurance Department funds. The Accounting Division also performs the following essential functions:

- Prepares the Department's SMART plan, annual operations plan, quarterly performance report, and budget requests
- Processes departmental semi-monthly payroll and maintains leave records
- Maintains property records and conducts annual property inventory audits
- Performs purchasing functions for departmental supplies and equipment
- Acts as system liaison to Information Technology and Producer Licensing Divisions to ensure that all producer fees for license applications, appointments and renewals are collected
- Opens and distributes departmental mail

**Examination Division** – The mission of the Financial Examiners Division is to assist the commissioner to regulate the solvency of insurance companies that are subject to Alabama insurance laws and regulations through surveillance, monitoring, analysis and examination. These activities are performed in accordance with nationally-recognized standards promulgated by the National Association of Insurance Commissioners (NAIC) and other regulatory and professional accounting agencies. Through these procedures, the division provides technical assistance and factual information for determining regulatory action.

- Examines financial condition of domestic companies, HMOs and fraternal benefit societies according to statutory requirements
- Files and reviews annual statements for licensed companies
- Reviews documents; financial statements and related items contained in the application for licensure filed by the company and issue a recommendation to the Commissioner of Insurance.
- Market Conduct Examiners And Analysts - The mission of the Market Conduct Section is to assist the commissioner to protect insurance consumers and to ensure that policyholders and claimants are treated fairly and equitably. The Market Conduct Section conducts examinations in accordance with the guidelines established by the National Association of Insurance Commissioners (NAIC) and other recognized agencies and institutions. The Market Conduct Section also prepares reports to the commissioner on factual findings and makes recommendations for corrective action when necessary.

**Information Technology Division** – Assists the commissioner to provide regulatory insurance oversight through online ,web-based technology applications. The division procures and maintains computer hardware and software and provides technological infrastructure for networks in the department.

**Legal Division** –The Legal Division handles legal matters for the commissioner and the department, holds hearings on insurance producers and companies, and may conduct civil or criminal proceedings.

**Producer Licensing Division** – Administers applicable statutes and regulations governing the initial and continued licensure of resident and non-resident producers, adjusters, service representatives,



dental service representatives, legal service representatives, motor club representatives, surplus line brokers, reinsurance intermediaries, managing general agents, and business entities.

This division also administers statutes and regulations governing the education of licensed individuals; collects fees from license applicants and issues licenses; maintains education standards for initial licensing and continuing education of insurance representatives; and initiates regulatory action for the cancellation or suspension of producers and service representatives who have failed to comply with the annual continuing education and license renewal requirements.

**Consumer Services Division** – Receives, researches, investigates and resolves individual consumer complaints against insurance companies, agents and brokers; provides educational materials and assistance for consumers and senior citizens on insurance questions and coverage provisions; deploys staff members to disaster sites to assist victims in expediting their insurance claims; and participates in consumer outreach programs with staff members speaking to community and consumer groups throughout the state. This division also investigates unlicensed and unauthorized insurance activities.

**Human Resources Division** - Supports the commissioner and department by providing services related to staffing, training, leave, and employee relations.

**Preneed Division** - Ensures that preneed companies and endowment care cemeteries doing business in Alabama meet the requirements of and comply with the preneed laws and regulations. Some of the division's functions are:

- Licensing preneed companies
- Reviewing form and document filings from preneed companies and preneed sales agents
- Investigating unlicensed entities and persons selling preneed merchandise and services
- Responding to and investigating consumer complaints and inquiries
- Providing information to the public and industry about the preneed law and regulations
- Performing analysis of examinations performed on preneed companies and identifying compliance issues
- Referring cases to the Legal Division for administrative action against licensed and unlicensed companies

**Rates and Forms Division** – Enforces the Alabama insurance statutes, regulations, and bulletins pertaining to insurance companies, producers, adjusters, and other licensed entities.

- Reviews rate/form filings submitted by insurance companies to determine compliance
- Assists consumers with regard to rating and underwriting complaints
- Responds and deploys staff members to disaster sites to assist victims
- Participates in consumer outreach programs

**Receivership Division** – When the Commissioner of Insurance institutes delinquency proceedings against an insurer domiciled in Alabama, the circuit court having jurisdiction appoints the Chief of the Receivership Division as receiver of the insurer. Typically, these proceedings begin with an order of rehabilitation, whereby the department's receiver attempts to reorganize the financial affairs of the insurer, during which time the insurer's regular insurance operations may be suspended. If the insurer cannot be rehabilitated, the receiver will petition the court for an order of liquidation. Upon obtaining an order of liquidation, the receiver will suspend all insurance operations that can be stopped and will liquidate the assets of the failed insurer in accordance with the court's direction.

According to information from Receivership Division staff on September 30, 2011, there are 9 insurance companies and 6 cemeteries in receivership.

**Fire Marshal's Office** – The State Fire Marshal's Office conducts inspections of buildings and properties to ensure the buildings are safe for occupancy and have adequate exits in the event of fire, disaster, or other emergencies. The State Fire Marshal's Office also regulates the fireworks, fire sprinklers, fire alarms, and blasting industries; and investigates fires, explosions, and any related crimes and provides assistance to fire departments and other law enforcement agencies. In addition, the Fire Marshal's Office provides training in fire prevention, fire investigation, detection of arson, and education for the interpretation of fire and building codes and life safety regulations.

## **PERSONNEL**

<b>Schedule of Employees By Merit System Classification/Sex/Race</b>							
	<b>#</b>	<b>B/M</b>	<b>W/M</b>	<b>B/F</b>	<b>W/F</b>	<b>O/M</b>	<b>O/F</b>
Commissioner of Insurance	1		1				
Receiver	1				1		
Clerk	3			2	1		
Administrative Support Assistant I	4			2	2		
Administrative Support Assistant II	6	1		3	2		
Administrative Support Assistant III	17	1	1	11	4		
Account Clerk	4			1	3		
Accounting Technician	2			1	1		
Staff Accountant	1			1			
Senior Accountant	3	1		1	1		
Accounting Manager	1				1		
Accounting Director	1			1			
Department Procurement Officer I	1		1				
Programmer Analyst, Associate	3		1	1	1		
Programmer Analyst	1				1		
Programmer Analyst, Senior	1				1		
IT Operations Technician	1			1			
IT Systems Technician, Senior	2	1			1		
IT Systems Specialist, Associate	2	1			1		
IT Manager I	1	1					
Ins. Consumer Complaint Spec. II	8	2	1	2	3		
Consumer Manager	1				1		
Insurance Examiner I	2	1	1				
Insurance Examiner II	15	3	6	4	2		
Insurance Examiner III	5		2	1	2		
Insurance Examiner IV	6		2		3	1	
Insurance Examinations Manager	1		1				
Insurance Examinations Supervisor	2		1	1			
Insurance Licensing Supervisor	1				1		
Insurance Rate Analyst II	5		3		2		
Actuary	2		2				
Sec/Ins Registration Manager	2		2				

Administrative Analyst III	1		1				
Special Investigator	2		2				
Legal Research Assistant	2			1	1		
Attorney I/II	3	1			2		
Attorney III	4	1	3				
Attorney IV	1		1				
Governmental Rel. Manager	1		1				
Department Personnel Manager I	1			1			
Personnel Assistant III	1			1			
Deputy State Fire Marshal	20	3	17				
Assistant State Fire Marshal	2		2				
State Fire Marshal	1		1				
Public Information Specialist	1		1				
<b>Total</b>	<b>146</b>	<b>17</b>	<b>54</b>	<b>36</b>	<b>38</b>	<b>1</b>	
	<b>#</b>	<b>B/M</b>	<b>W/M</b>	<b>B/F</b>	<b>W/F</b>	<b>O/M</b>	<b>O/F</b>

### **Legal Counsel**

Attorneys Ralph R. Norman, III, J. Fairley McDonald, III, Terry L. Raycraft, Ryan A. Donaldson, William L. Rodgers, Jr., Lucie McLemore, Kathleen Healey, and Dennis M. Wright provide legal counsel. All are employees of the Department of Insurance.

## **PERFORMANCE CHARACTERISTICS**

### **Number of Persons per Licensed Insurance Producer in Alabama and Surrounding States**

		Licensed Insurance Producers (sellers)– 2010 <sup>2</sup>					
		Individuals			Business Entities		
State	Population <sup>1</sup>	Total	Resident	Non-Resident	Total	Resident	Non-Resident
Alabama	4,779,736	94,855	26,910	67,945	7,184	2,465	4,719
Florida	18,801,310	401,593	224,892	176,701	52,082	27,511	24,571
Georgia	9,687,653	154,275	58,367	95,908	19,855	10,447	9,408
Mississippi	2,967,297	95,245	24,627	70,618	6,592	1,611	4,981
Tennessee	6,346,105	128,609	45,908	82,701	4,878	970	3,908

	Population <sup>1</sup>	Persons per Licensed Individual Insurance Producer	Persons Per Licensed Insurance Producer Business Entity
<b>Alabama</b>	<b>4,779,736</b>	<b>50.4</b>	<b>665</b>
Florida	18,801,310	47	361
Georgia	9,687,653	63	488
Mississippi	2,967,297	31	450
Tennessee	6,346,105	49	1301

<sup>1</sup>Source – 2010 US Census

<sup>2</sup>Source - NAIC Insurance Department Resource Report

<sup>3</sup> Licensed or Chartered Insurers- 2010				
	Domestic Insurers	Foreign Insurers	Self-Insured Groups or Pools	Purchasing Groups
Alabama	52	1,381	0	7
Florida	471	1,510	11	47
Georgia	98	1,681	62	0
Mississippi	43	1,529	0	2
Tennessee	64	1,545	8	6

<sup>3</sup>Source: NAIC Insurance Dept Resource Report

### **Notification to Licensees of Decisions to Amend Administrative Rules**

The Department of Insurance is partially exempt from the requirements of the Administrative Procedure Act; however, the department is required by its statutes to meet the requirements of the Act pertaining to posting notice of intended action with the Legislative Reference Service (*Code of Alabama 1975*, Section 27-7-43). The department also publishes notice of a regulation hearing, for the adoption of a new or revised rule, in the Mobile Register and Birmingham News at least once each week during the four weeks immediately preceding the week in which the hearing is to be held. Additionally, the department maintains a list of persons who have asked to receive email notice of regulation hearings. This email is usually sent just prior to the date the notice is scheduled to appear in the newspapers. Notice of the hearing is also posted on the department's web page.

### **Inspections**

State Fire Marshal Inspections FY 2007 – 2011*					
Inspections	2007	2008	2009	2010	2011*
<b>Total</b>	1755	1623	1726	1800	1440
Information obtained from: State Fire Marshal					

\* - As of September 1, 2011

### **Fire Hazard Inspections**

The Fire Marshal conducts inspections in accordance with the *Code of Alabama 1975*, Section 36-19-11, which provides that, "The Fire Marshal, his deputies or assistants, upon the complaint in writing of any citizen, or whenever he or they shall deem it necessary, shall inspect at all reasonable hours, any and all buildings or premises within their jurisdiction. When any such officer shall find any building or other structure which, for want of repairs, lack of sufficient fire escapes, automatic or other fire alarm apparatus or fire extinguishing equipment or by reason of age or dilapidated condition or from any other cause, is especially liable to fire and is situated so as to endanger life or property, and whenever any such officer shall find in any building combustible or explosive matter or inflammable conditions dangerous to the safety of such building, he or they shall order the same removed or remedied, and such order shall be immediately complied with by the owner or occupant of such premises or buildings."

According to a State Fire Marshal, violations found during inspections are scheduled for re-inspection until the violations are corrected. Serious violations which clearly indicate that fire is inevitable and pose a serious threat to life are served with a Fire Marshal Order to abate the violation and are closed until the violation is corrected.

According to the Fire Marshal, on January 2, 2011, the department implemented new inspection tracking software. As of September 1, 2011, 692 inspections were performed with 690 failing of which 440 were fully corrected; 250 remain in a failed status with re-inspections being conducted. The length of time allowed for correction depends on the violation. Simple items are given a few days. Violations that require a large expenditure of funds are given more time. The Fire Marshal requires alternative safety measures during the time the facility is in violation. An example of an alternative measure would be posting a fire watch until an out-of service sprinkler or fire alarm system could be repaired. A fire watch is a person dedicated to patrol the facility and report any problems, and to assist occupants with evacuation in case of fire. The International Fire Code allows these measures and prescribes required knowledge and actions of the fire watch. A fire watch is used in schools, jails, prisons, assembly occupancies, etc. when systems are down for more than four hours.

## **COMPLAINT HANDLING**

<p><b>Initial Contact/Documentation</b></p>	<p>Consumer complaints are received in the Consumer Division. Complaints may be submitted via email, fax, or letter. By statute, complaints must be in writing. (<i>Code of Alabama 1975</i>, section 27-7-37(a))</p> <p>Complaint forms can be found on the department's website; although use of the form is not required. Anyone, including staff members of the Department of Insurance, can file a complaint. Complainants may also report suspected arson online on the Fire Marshal's Office website.</p> <p>During catastrophes, consumer specialists are onsite to directly assist consumers with complaints. The Department has also developed a system called "e-storm" for handling complaints related to catastrophes such as hurricanes and tornadoes. If consumers are not satisfied with an insurer's handling of storm claims, the consumer may request further review through the department's mediation program.</p> <p>Notifications of receipt of complaints are handled according to how the complaint was received. For written complaints, the complainant is sent a preprinted card with contact information via mail the day the complaint is assigned to a Complaint Specialist.</p> <p>For complaints received by email, an electronic notification generates automatically from the system once the complaint is entered into the AIIMS system. (Alabama Insurance Information Management System) A database of complaints is kept on the AIIMS system in the Consumer Affairs division of the Department of Insurance.</p>
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<b>Anonymous Complaints</b>	The Department does not accept anonymous complaints.
<b>Investigative Process</b>	<p>Complaints are assigned to a Consumer Complaint Specialist on the day they are received by the Consumer Division. The complaint is then logged into AIIMS and the complainant is notified that the complaint has been received at that time.</p> <p>Consumer Complaint Specialists investigate all complaints. Investigations that lead to possible administrative or court actions against insurance producers or companies are referred to the Legal Division.</p>
<b>Probable Cause Determination</b>	<p>The attorneys in the Legal Division make a probable cause determination and decide whether to file an administrative or court proceeding.</p> <p>Based on the facts of the case, the attorneys determine which action to take. If the matter involves a violation of the licensing laws, an administrative action is filed. If the conduct is criminal in nature, a referral package is prepared for the Attorney General or District Attorney.</p> <p>If, upon reviewing the complaint the attorneys find that the charges constitute grounds for the revocation or suspension of the license under <i>Code of Alabama 1975</i>, Section 27-7-19, they notify the licensee and serve him or her with a copy of the complaint. Service of the notice and copy of the complaint made are sent by registered or certified mail, addressed to the licensee shown in the records of the commissioner.</p> <p>Within 30 days after service upon the licensee of the copy of the complaint made against him or her, the licensee must file with the commissioner an answer in writing to the charges. If the licensee against whom the complaint has been made does not answer in writing, stands in default for answer, the charges are considered as admitted. The same process is used if the complaint is against an individual adjuster, producer, or agent.</p>
<b>Resolution without Formal Hearing</b>	<p>The department resolves most cases against licensees by negotiated settlement. The attorney assigned to the case works with the involved staff and the licensee to reach a settlement. When a settlement agreement is agreed to it is signed by the licensee and the Department's attorney. An order is then signed by the Commissioner.</p> <p>The department also has a mediation program. Within 60 days of the time an insurer receives a first party claim, and provided the claim has not been resolved, the insurer must mail to the</p>

	<p>insured a mediation notice of the right to mediate disputed claims. The mediation process can begin 21 days after the date of the mediation notice has been sent. An independent mediator who has no connection with the insurer is selected by the Department of Insurance and approved by the insured and the insurer. The mediator will be in charge of the mediation conference.</p> <p><i>(Administrative Rule 482-1-135-.04)</i></p> <p>According to department staff, the mediation program has only been invoked once, in 2005, for a settlement of claims related to hurricanes Ivan and Katrina.</p>
<b>Formal Hearing</b>	<p>If the investigation reveals that probable cause exists to revoke or suspend a license, the licensee is notified by certified mail of the charges. The licensee has 30 days to respond to the complaint in writing. After receiving the licensee's response, an administrative hearing is scheduled held as soon as possible, allowing at least 20 days' notice to the licensee.</p> <p><i>(Code of Alabama 1975, Section 27-7-37(d)).</i></p> <p>The <i>Code of Alabama 1975</i>, Section 27-2-30 calls for hearings to be conducted by the "commissioner or his deputy or examiner."</p> <p>The commissioner may issue a cease and desist order; revoke or suspend a license; or refer the case to the courts for criminal prosecution.</p> <p>Attorneys employed by the Department of Insurance, who are appointed Deputy Attorney Generals, present the Insurance Department's position.</p>
<b>Notification of Resolution to the Complainant</b>	<p>Within 30 days of the conclusion of a hearing, the commissioner makes a ruling disposing of the complaint. A copy of the ruling is mailed to the complainant, the licensee, and all interested parties represented by the licensee.</p>

### **Insurance Complaints**

	<b>Schedule of Complaints Resolved 2007 through 2011 Fiscal Years</b>					
Year / Number Received	Year / Number Resolved					Pending
	2007	2008	2009	2010	2011*	
2007 / 990	851	105	9	2	0	23
2008 / 735		586	125	3	0	21
2009 / 994			803	170	2	19
2010 / 2224				2037	165	22
2011 / 2331					2200	131
	* As of September 1, 2011					
	Source of Data: AIIMS Database					

### **Pre-Need (funeral/burial) Complaints**

	<b>Schedule of Complaints Resolved 2007 through 2011 Fiscal Years</b>					
Year / Number Received	Year / Number Resolved					Pending
	2007	2008	2009	2010	2011*	
2007 / 12	12					
2008 / 11		11				
2009 / 19			19			
2010 / 25				24		1
2011 / 16					13	3
	* As of September 1, 2011					
	Source of Data: Pre-Need Manager					

### **Fire Marshal's Office Complaints**

	<b>Schedule of Complaints Resolved 2007 through 2010 Fiscal Years</b>					
Year / Number Received	Year / Number Resolved					Pending
	2007	2008	2009	2010	2011*	
2007 / 911	911					
2008 / 958		958				
2009 / 871			871			
2010 / 924				924		
2011 / 598					598	
	* As of September 1, 2011					
	Source of Data: State Fire Marshal					

**Average Time to Resolve Complaints** – 15 days



# **SMART GOVERNING**

## **2010 SMART Quarterly Performance Report**

<b>Goals</b>			<b>Comments</b>	
To resolve 100% of consumer inquiries and complaints within 60 days by FY14.			Goal appears reasonable and is consistent with the mission of the Department.	
Respond to 100% of citizen complaints within 24 hours by FY14.			Goal appears reasonable and is consistent with the mission of the Department.	
Maintain 100% examination completion rate within 18 months “as of” date in compliance with NAIC standards by FY14.			Goal appears reasonable and is consistent with the mission of the Department.	
<b>Objective</b>	<b>Unit of Measure</b>	<b>Target</b>	<b>Reported</b>	<b>Comments</b>
(O1-Efficiency) % of cases resolved within 60 days.	%	Establish Baseline	90.14%	Objective appears reasonable. Supporting data was accurate and available for audit.
(O1-Efficiency) Percentage of cases responded to within 24 hours.	%	Establish Baseline	100%	Objective appears reasonable. <b>Supporting data was not available for audit.</b>
(O1-Efficiency) 100% completed examinations within 18 months.	%	100%	100%	Objective appears reasonable. Supporting data was accurate and available for audit.

## **2011 SMART Quarterly Performance Report**

<b>Goals</b>			<b>Comments</b>	
Protect the public from unfair and illegal practices involving insurance by regulating persons engaged in the sale of insurance by providing counseling and assistance to the public and by monitoring compliance with state laws and through competent regulation of rates and policies for insurance and pre-need markets.			<b>Goal has no quantifiable long-term target and has multiple activities. No date specified for achievement. Will not be able to determine when goal is achieved.</b>	
To efficiently ensure that insurers and other regulated entities doing business in Alabama are financially sound and in compliance with applicable law.			<b>Goal has no quantifiable long-term target. No date specified for achievement. Will not be able to determine when goal is achieved.</b>	
Protect the public from loss of life and property due to fire or explosion.			<b>Goal has no quantifiable long-term target. No date specified for achievement. Will not be able to determine when goal is achieved.</b>	
<b>Objective</b>	<b>Unit of Measure</b>	<b>Target</b>	<b>Reported</b>	<b>Comments</b>
(O1-Efficiency) Complete the licensing process in prompt fashion.	Licenses processed in 3 days	100%	*	<b>Not consistent with guidelines. Target should be a specific percentage of licensees processed within 3 days. Unit of measure is “%”</b>
(O2-Quality) To respond in a timely fashion to consumer inquiries and complaints	Percentage of cases resolved within 60 days	90%	*	<b>Not consistent with guidelines. Target should be 90% percent of cases resolved within 60 days. Unit of measure is “%”.</b>

(O3-Quality) Provide access to markets for the newest insurance products through timely rate/policy approval process	Percentage of rates / forms reviewed within 30 days	99%	*	Not consistent with guidelines. Target should be 99% percent of forms reviewed within 30 days. Unit of measure is “%”.
(O1-Quality) Timely complete examinations of insurance companies.	Examinations completed W/I 18 months of “as of” date	100%	*	Not consistent with guidelines. Target should be # examinations completed within 18 months of “as of” date. Unit of measure is “#”. Percentage is not mentioned in the objective statement or the unit of measure.
(O2-Quality) Timely and accurate collection of insurance premium tax.	Audits / Refunds completed by March 1	100%	*	Not consistent with guidelines. Target should be # audits/refunds completed by March 1. Unit of measure is “#”. Percentage is not mentioned in the objective statement or the unit of measure.
(O1-Quality) Respond to citizen complaints or requests in a timely fashion	Percentage of cases responded within 24 hours	100%	*	Not consistent with guidelines. Target should be percentage of cases responded to within 24 hours. Unit of measure should be “%”.
(O2-Efficiency) Rapidly respond to requests for arson investigations	Percentage responded within 2 hours	100%	*	Not consistent with guidelines. Target should be percentage responded to within 2 hours. Unit of measure should be “%”.

\* Annual performance data had not been reported at the time this report was prepared.

## **REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The **National Association of Insurance Commissioners (NAIC)** is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

The Examiners Division performs analysis and examination of insurance companies in accordance with nationally-recognized standards promulgated by the NAIC.

## **FINANCIAL INFORMATION**

### **Source of Funds**

The department's operating funds consist of insurance licensing and regulatory fees, fees for audits and examinations of insurance companies, fees for service contract registrations, and permits / certifications issued by the State Fire Marshal.

### **Funds/Accounts**

**Fund 341** – The Special Examination Revolving Fund is authorized by the *Code of Alabama 1975*, Section 27-2-25(b). This fund maintained in the State Treasury accounts for the receipts and disbursements associated with the operations of Insurance Examiners Division and some expenses associated with the administration of insolvent insurers placed under the control of the Receivership Division. Receipts for this fund include:

- Fees charged for statutorily required financial examinations
- Audits of quarterly and annual financial statements of insurance companies authorized to conduct business in Alabama
- Other amounts recovered from the assets of the insolvent insurers for reimbursement of departmental expenses incurred in administering the receivership estates.

The unexpended balance in this fund at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.

**Fund 342** – The State Fire Marshal's Fund is authorized by the *Code of Alabama 1975*, Section 8-17-255. This fund maintained in the State Treasury accounts for some receipts and disbursements associated with the operations of the State Fire Marshal's Office. Receipts are derived from fees charged for application for and issuance of firework permits, fire protection sprinkler system installer permits, and licenses for commercial users of explosives (blasting contractors). The unexpended balance in this fund at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.

**Fund 921** – The Department of Insurance Fund is authorized by the *Code of Alabama 1975*, Section 27-2-39. This fund maintained in the State Treasury accounts for receipts and disbursements associated with the general operations of the department, including portions of the State Fire Marshal's Office. Receipts for this fund are comprised of 50 percent of various licensing fees retained for operations (The remaining 50 percent is deposited directly into the state's General Fund and is not available for use by the department.) The unencumbered and unexpended balance at the end of the fiscal year in excess of 25 percent of the amount appropriated for that fiscal year must be transferred to the state's General Fund.

**Fund 934** – The Service Contract Revolving Fund is authorized by the *Code of Alabama 1975*, Section 8-32-3. This fund maintained in the State Treasury accounts for the receipts and disbursements associated with service contract providers. The unexpended balance in Fund 934 at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.

**Fund 1233** – The Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act Fund is authorized by the *Code of Alabama 1975*, Section 8-17-270. This fund maintained in the

State Treasury accounts for receipts and disbursements associated with fire safety and prevention programs in the State Fire Marshal's Office. The unexpended balance in Fund 1233 at the end of the fiscal year remains in the fund for subsequent appropriation and expenditure.

Individual Checking and Investment Accounts - In addition to funds maintained in the State Treasury, the Receivership Division Chief controls the individual checking and investment accounts for each insurance company estate in receivership.

### **Insurance Premium Tax**

The department collects and distributes an insurance premium tax from companies authorized to transact insurance business in Alabama, as provided by the *Code of Alabama 1975*, Sections 27-4A-1 through 7. No part of the premium tax is available for use by the Department of Insurance. The insurance premium tax is collected and distributed as follows:

**General Fund** – receives 100% of premium tax paid by all health maintenance organizations (HMOs), 50% of the tax paid by domestic life insurers, 25% of the tax paid by all other domestic insurers, 100% of the tax paid by foreign life insurers, 62.5% of tax paid by all foreign property insurers and 75% of the tax paid by all other foreign insurers.

**Education Trust Fund** – receives 50% of insurance premium tax paid by domestic life insurers, 75% of the tax paid by all other domestic insurers, 37.5% of tax paid by foreign property insurers, and 25% of the tax paid by all other foreign insurers. The amount distributed to the Education Trust Fund is capped at the amount distributed in the 1992 fiscal year. Any excess is distributed to the state's General Fund.

**Special Mental Health Trust Fund** – receives 100% of insurance premium taxes paid by nonprofit corporations organized pursuant to the *Code of Alabama 1975*, Sections 10-4-100 through 10-4-115. The amount distributed to the Special Mental Health Trust Fund is capped at the amount distributed in the 1992 fiscal year. Any excess is distributed to the state's General Fund.

<b>Premium Tax Distribution Fiscal Years 2007-2011</b>					
<b>Fund</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
General Fund	236,694,941	220,588,592	232,420,576	256,556,347	239,798,282
Education Trust Fund	30,993,296	30,993,297	30,993,296	30,993,295	30,993,296
Mental Health Fund	4,525,338	4,525,338	4,525,338	4,525,338	4,525,338
<b>Total</b>	<b>\$ 272,213,575</b>	<b>\$ 256,107,227</b>	<b>\$ 267,939,210</b>	<b>\$ 292,074,980</b>	<b>\$ 275,316,916</b>

In addition to collecting and distributing the premium tax, the department collects various other fees that are distributed by law in whole or in part to the state's General Fund.

<b>Additional Distributions Fiscal Years 2007-2011</b>					
	<b>2011*</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Total</b>	<b>\$ 6,591,551</b>	<b>\$ 7,688,985</b>	<b>\$ 6,673,357</b>	<b>\$ 6,503,656</b>	<b>\$ 5,667,546</b>

\* - through 3<sup>rd</sup> quarter

### **Schedule of Fees**

<b>FeeType / Purpose</b>	<b>Statutory Authority</b>	<b>Rule</b>	<b>\$Amount Authorized</b>	<b>\$Amount Collected</b>
<b>Fund 341</b>				
Service Contract Provider Form Filing Fee	8-32-10		40.00	40.00
Dental Service Plan - Initial Admission	22-21-374; 27-4-2(a)(1)(a)(b); 27-4-2(12)(b)		1,005.00	1,005.00
Dental Service Plan Renewal	22-21-374; 27-4-2(a)(1)(c) 27-4-2(a)(12)(b)		505.00	505.00
Dental Service Plan Filing Fee	22-21-374; 27-4-2(a)(4)		25.00	25.00
Time and Travel Expenses for Actuaries Conducting Audit	27-2-2(a)(2-25)		Varies	Varies
Time and Travel Expenses for Examiners Conducting Audit	27-2-25(a)		Varies	Varies
Examination fee Annual Statement - Mutual Aid Assoc., Fraternal Benefit Societies	27-2-25		225.00	225.00
Examination Fee Annual Statement - Health Maintenance Organizations	27-2-25		300.00	300.00
Examination Fee Annual Statement - All Others Insurers, including Health Care Service Plans	27-2-25		850.00	850.00
Examination Fee Annual Statement - Application for Original Certificate of Authority	27-2-25		1,500.00	1,500.00
Examination Fee - Foreign Examination Reports	27-2-25		200.00	200.00
Examination Fee - Application for Accepted Reinsurer Status	27-2-25		250.00	250.00
Examination Fee - MGA Filings	27-2-25		100.00	100.00
Examination Fee - Foreign Risk Retention Group Filings	27-2-25		100.00	100.00
Form Filings - Risk Retention Groups	27-2-25		100.00	100.00
Form Filings - Risk Purchasing Groups	27-2-25		100.00	100.00
MGA Filing Fees	2009 – 08 bulletin		100.00	100.00

Annual License Fee - Premium Finance Company	27-40-3(b)		200.00	200.00
Annual License Fee for Agency Financing Own Premiums of Less Than 150,000.00 annually	27-40-3(b)		50.00	50.00
Legal Service Ins. Corp. - Admission	27-43-13		1,005.00	1,005.00
Legal Services Ins. Corp.-Renewal	27-43-13		505.00	505.00
Legal Service Ins. Corp. - Filing Fee	27-43-13		25.00	25.00
Any Property, Casualty, Wet Marine, Marine, and Title Form Filing (per form)	27-2-25		40.00	40.00
Any Property, Casualty, Marine, and Surety Rate or Rule Filing	27-2-25		75.00	75.00
Any Combination Rate and/or Rule Filing	27-2-25		75.00	75.00
Receivership Expenses Billed at Actual Cost	27-2-52		Varies	Varies
<b>Fund 342</b>				
Manufacturer's Fireworks Permit	8-17-211(e)(1)		2,000.00	2,000.00
Distributor's Fireworks Permit	8-17-211(e)(2)		2,000.00	2,000.00
Wholesaler's Fireworks Permit	8-17-211(e)(3)		700.00	700.00
Retailer's Fireworks Permit	8-17-211(e)(4)		200.00	200.00
Seasonal Fireworks Permit	8-17-211(e)(5)		200.00	200.00
Seasonal Fireworks Permit after July 10	8-17-211(e)(6)		100.00	100.00
Fireworks Display Permit	8-17-211(e)(7)		50.00	50.00
Blaster Certification	8-17-243(d)		100.00	100.00
Blasting Contractor License	8-17-247(c)		2,000.00	2,000.00
Variation Request for Blasting Fees	8-17-250(b)		Not to exceed 50.00	50.00
Penalty for each Violation	8-17-253		500.00	500.00
Annual Skilled Worker Exemption Certification	34-33-1	482-2-103-.02(2) & (5)	100.00	100.00
Sprinkler Permit	34-33-4		100.00	100.00
Fire Pump Permit	34-33-12		100.00	100.00
Fire Alarm Permit	34-33A-13		100.00	100.00
<b>Fund 921 – Pre-Need</b>				
Application for Preneed Certificate of Authority	27-17A-11(d)(1)		Not to exceed 150.00	150.00
Annual Renewal for Preneed Certificate of Authority	27-17A-11(d)(1)		Not to exceed 75.00	75.00
Application for Preneed	27-17A-11(d)(2)		Not to exceed	150.00

Branch Certificate of Authority			150.00	
Annual Renewal for Preneed Branch Certificate of Authority	27-17A-11(d)(2)		Not to exceed 150.00	100.50
Transfer Application for Certificate of Authority	27-17A-11(j)		Not to exceed 100.00	100.00
Transfer Application for Branch Registration	27-17A-11(j)		Not to exceed 100.00	100.00
Fine for Failure to File Annual Statement	27-17A-11(h)(2)		Not to exceed 50.00 per day	50.00 per day
Registration of Preneed Sales Agents	27-17A-18(g)	482-3-001.07(2)	Not to exceed 25.00	25.00
Settlements and Fines for Violations	27-17A-21(a)		Varies	Varies
<b>Fund 921 - Other</b>				
License Renewal by Producer or Service Representative	27-8A-9(a)(1)	482-1-110-.04(1)(a)(1 & 2)	40.00	40.00
One-time Education Provider Authority Original Filing Fee	27-8A-9(a)(3)	482-1-110-.06(5)	300.00	300.00
Education Provider Annual Renewal Fee	27-8A-9(a)(4)	482-1-110-.06(5)	100.00	100.00
Course Approval Filing Fee for Each Course	27-8A-9(a)(5)	482-1-110-.06(6)	50.00	50.00
Rental Insurance Application Fee - Individual or Company	27-4-2(a)5a1 / b1		20.00	20.00
Rental Insurance Initial License Fee - Company	27-4-2(a)5b2		100.00	100.00
Rental Insurance Initial License Fee - Individual	27-4-2(a)5a2		40.00	40.00
Rental Insurance Biennial Renewal License Fee - Company	27-4-2(a)(5)(b)(2)		100.00	100.00
Rental Insurance Biennial Renewal License Fee - Individual	27-4-2(a)(5)(a)(1)		40.00	40.00
Rental Insurance Late Renewal License Fee - Individual or Company	27--8A-9(a)(2)		50.00	50.00
Title Agent Certificate of Authority	27-25-4(b)		50.00	50.00
Late Filing Fee for each Agent or Broker failing to make a timely filing of the compliance form	27--8A-9(a)(2)	482-1-110-.04(2)(c)	50.00	50.00

<b>Fund 100</b>				
Returned Check Fee	8-8-15(b)		30.00	30.00
Fines for Violation of P & C Laws	27-7-4(a)		Varies	Varies
Penalty for Filing Premium Tax Return Late	27-4A-4		1,000 - 10,000	1,000 - 10,000
Fine for Violating Chapter 10	27-10-37(a)(c)		1,000 - 2,000	1,000 - 2,000
Penalty for Filing Annual Statement Late	27-3-26(c)		250.00	250.00
Penalty for Violation of Insurance Code	27-1-12		Up to 1,000	Up to 1,000
Fine for Violation of Rating Laws - Fire, Marine	27-13-45		Varies	Varies
Fines for Violation of Rating Laws - Casualty & Surety	27-13-83		Varies	Varies
<b>Funds 921 and 100 (50% to each fund)</b>				
Miscellaneous Copies of Documents, per page	27-4-2(a) 12(a)		1.00	1.00
Copy of Certificates under Commissioner's Seal	27-4-2(a) 12(b)		5.00	5.00
Retaliatory Tax on License, Fees, Taxes, Fines, Penalties, or Deposits placed upon Alabamians doing business	27-3-29		Varies	Varies
Initial Application for Certificate of Authority (COA)	27-4-2(a)-1a		500.00	500.00
Issue Original Certificate of Authority (COA)	27-4-2(a)-1b		500.00	500.00
Renewal Fees for Certificate of Authority (COA)	27-4-2(a)-1c		505.00	505.00
Reinstatement fee for Certificate of Authority (COA)	27-4-2(a)-1d		505.00	505.00
Charter Documents or Amendments	27-4-2(a)-2		25.00	25.00
Solicitation Permit, Application and issuance	27-4-2(a)-3		250.00	250.00
Annual Statement of Insurance – Filing Fee Renewal	27-4-2(a)-4		25.00	25.00
Reinsurance Intermediary Filing Application for License	27-4-2(a)-7a	482-1-107-.07 & 482-1-107-.05(2)(a)	30.00	30.00
Reinsurance Intermediary Issuance of Initial License	27-4-2(a)-7b	482-1-107-.07 & 482-1-107-.05(2)(a)	140.00	140.00



Reinsurance Intermediary Annual Continuation of License	27-4-2(a)-7c	482-1-107-.07 & 482-1-107-.05(2)(b)	100.00	100.00
Managing General Agent's Application for License (MGA)	27-4-2(a)-8a	482-1-106-.07(2)(a)	30.00	30.00
Managing General Agent's Issuance of License (MGA), each insurer	27-4-2(a)-8b	482-1-106-.07(2)(a)	125.00	125.00
Managing General Agents Annual Renewal of License (MGA), each insurer	27-4-2(a)(8)( c )	482-1-106-.07(2)(b)	75.00	75.00
Service of Legal Process	27-4-2(a)13		50.00	50.00
Fraternal Benefit Society - Filing for Service of Process upon Commissioner	27-4-2(a)13		50.00	50.00
HMO - Application for Certificate of Authority or Amendment	27-21A-21(a)(1)	482-1-079.03(1)	50.00	50.00
HMO - Filing Amendment to Organizational Documents	27-21A-21(a)(2)		10.00	10.00
HMO - Filing Annual Report	27-21A-21(a)(3)		20.00	20.00
HMO - Renewal for Certificate of Authority	27-21A-21(a)(4)		200.00	200.00
Fraternal Benefit Society - License or Renewal	27-4-2(a) 13 and 27-34-6(c)		50.00	50.00
Fraternal Benefit Society - Filing of Annual Statement	27-34-36		10.00	10.00
Motor Club License Fee - Annual	27-39-6		250.00	250.00
Producer Directory CD	27-2-16(a)(4)		200.00	200.00
Service Representative Application Fee for License	27-4-2(a)9a		20.00	20.00
Service Representatives Appointment Fee, each Insurer, Initial	27-4-2(a)9b		30.00	30.00
Service Representatives Appointment Fee, each Insurer, Annual Renewal	27-4-2(a)9c		30.00	30.00
Surplus Line Brokers Annual License (i.e. Application)	27-4-2(a) 10(a)		20.00	20.00
Surplus Line Brokers License Fee, Initial - Individual	27-4-2(a) 10(b)1		200.00	200.00
Surplus Line Brokers License Fee - Annual Renewal - Individual	27-4-2(a) 10(b)1		200.00	200.00

Surplus Line Brokers Initial License - Business Entity	27-4-2(a) 10(b)2		500.00	500.00
Surplus Line Brokers Renewal License - Business Entity	27-4-2(a) 10(b)2		500.00	500.00
Adjuster License - Initial Application Fee	27-4-2(a) 11(a)		20.00	20.00
Adjuster License Fee - Initial License	27-4-2(a) 11(b)		80.00	80.00
Adjuster License - Biennial Renewal	27-4-2(a) 11(b)		80.00	80.00
Producer Application Fee for Resident and Non-Resident Individual Producer	27-4-2(a)5a1	482-1-111-.06(2)(c)	20.00	20.00
Producer License Fee for Resident and Non-Resident Individual Producer (Biennially)	27-4-2(a)5a2	482-1-111-.06(2)(c)	40.00	40.00
Producer Application Fee for Resident and Non-Resident Business Entities Producer	27-4-2(a)5b1	482-1-111-.06(1)(c)	20.00	20.00
Producer License Fee for Resident and Non-Resident Business Entities (Biennially)	27-4-2(a)5b2	482-1-111-.06(1)(c) 482-1-110-.04(1)(b)(2)	100.00	100.00
Producer Filing Notice of Appointment - Resident and Non-Resident	27-4-2(a) 6(a)		30.00	30.00
Producer Annual Continuation of Appointment	27-4-2(a) 6(b)		10.00	10.00
Producer Rental Insurance Appointment Renewal fee- Individual or Company	27-4-2(a) 6(b)		10.00	10.00
Licensing of Rating Organization - Fire etc., Inland Marine	27-13-24(c)		25.00	25.00
Licensing of Rating Organizations - Casualty and Surety Insurance	27-13-62		25.00	25.00
<b>Fund 934</b>				
Service Contract Provider Fee	8-32-3(c)		200.00	200.00
Civil Penalty of \$500 per violation but no more than \$10,000 in aggregate for Violations of the Same Nature	8-32-10(f)		500 - 10,000	500 - 10,000

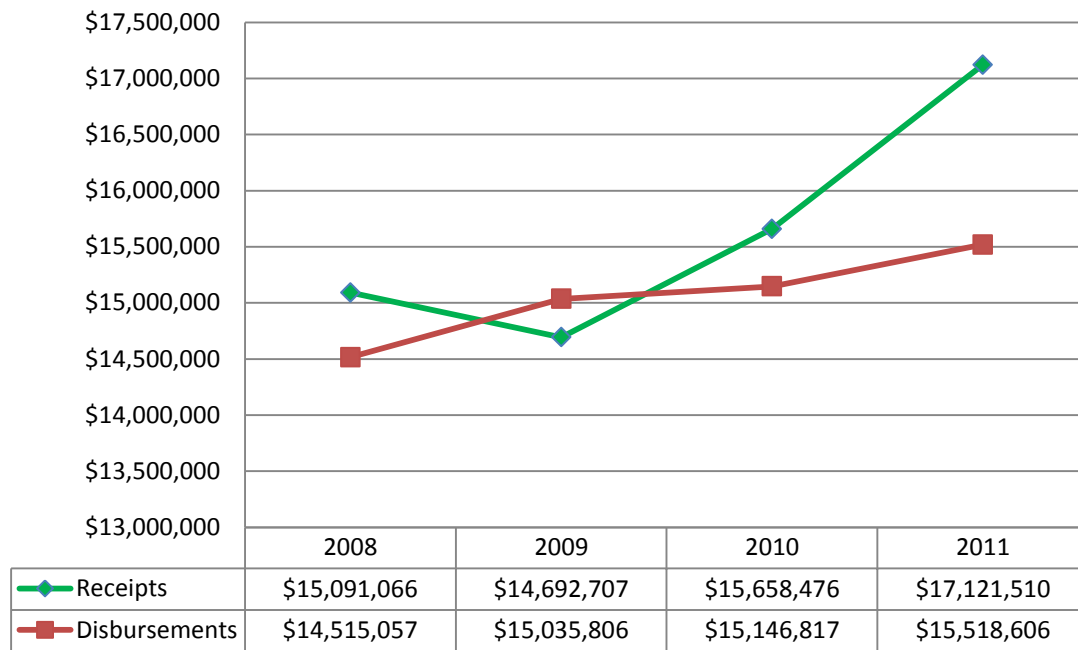
<b>Fund 1233</b>				
Civil Penalty not to Exceed 10,000	8-17-272(d)		Varies	Varies
Reduced Cigarette Ignition Propensity Standards & Firefighter Protection Act	8-17-273(10)(e)		1,000.00	1,000.00
Civil Penalty not to Exceed \$100 for each pack of cigarettes sold, but not greater than \$100,000 during a 30 day period (Manufacturer)	8-17-275(a)		Varies	Varies
Civil Penalty not to Exceed \$100 per pack sold or offered for sale not to exceed \$25,000 during a 30 day period (Retail dealer at least)	8-17-275(b)		Varies	Varies
\$75,000 not to exceed \$250,000 (Corporation, partnership, sole proprietor, HD Partnership, or Association)	8-17-275(c)		Varies	Varies
Civil penalty not to exceed \$1,000 (first offense), not to exceed \$5,000 (subsequent offense) for each violation	8-17-275(d)		Varies	Varies

## **Schedule of Receipts, Disbursements, and Balances**

October 1, 2006 through September 30, 2010

	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
<b><u>Receipts</u></b>				
Fees, Fines, and Other receipts	\$17,121,509.57	\$15,658,475.95	\$14,692,706.83	\$ 15,091,065.52
<b><u>Disbursements</u></b>				
Personnel Costs	7,875,052.18	8,234,834.20	8,181,755.69	7,387,214.28
Employee Benefits	2,954,910.33	2,909,795.81	2,877,547.75	2,606,934.83
Travel in state	357,654.00	400,808.35	499,135.55	539,117.93
Travel out of state	146,416.64	274,099.58	131,279.18	135,903.54
Repairs and Maintenance	10,424.89	30,726.10	7,243.60	23,225.02
Rentals and Leases	1,492,000.84	1,233,337.00	1,029,054.35	986,807.85
Utilities and Communications	192,822.36	204,778.45	240,376.72	218,714.76
Professional Services	1,678,682.75	1,018,610.48	1,121,046.16	1,652,376.62
Supplies, Materials, and Operating Expenses	367,937.50	441,312.78	476,781.24	436,279.93
Transportation Equipment Operation	174,426.80	154,253.58	120,482.67	179,684.46
Grants and Benefits	268.82	130.66	19.20	1,371.76
Transportation Equipment Purchases	148,430.05	105,868.00	80,680.30	161,721.62
Other Equipment Purchases	119,579.31	143,446.83	270,403.33	185,704.49
Transfer to General Fund	-	1,000,000.00	419,126.11	-
	15,518,606.47	16,152,001.82	15,454,931.85	14,515,057.09
Excess (Deficiency) of Receipts over Disbursements	1,602,903.10	(493,525.87)	(762,225.02)	576,008.43
Cash Balances at Beginning of Year	8,127,999.12	8,621,524.99	9,383,750.01	8,807,741.58
Cash Balances at End of Year	9,730,902.22	8,127,999.12	8,621,524.99	9,383,750.01
Reserved for Unpaid Obligations	(2,750,312.28)	(2,322,332.47)	(1,252,555.58)	(1,852,577.33)
Unreserved Cash Balances at end of Year	\$ 6,980,589.94	\$ 5,805,666.65	\$ 7,368,969.41	\$ 7,531,172.68

### **Operating Receipts vs. Operating Disbursements**



NOTE: Transfers to the state's General Fund have been removed.

# **QUESTIONNAIRES**

## **Producer Questionnaire**

Surveys were sent to 100 licensees of whom 17 responded. The percentages shown are based on the number who responded to the question.

- 1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>14</b>	<b>82%</b>
No	1	6%
Unknown	1	6%
No Opinion	1	6%

- 2. Do you think any of the Department's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	4	24%
<b>No</b>	<b>13</b>	<b>76%</b>
Unknown	0	0%
No Opinion	0	0%

- 3. Do you think any of the Department's requirements are irrelevant to the competent practice of your profession?**

Yes	4	24%
<b>No</b>	<b>10</b>	<b>58%</b>
Unknown	3	18%
No Opinion	0	0%

### **Respondent 6** – “Requiring a separate license for Motor Club.”

- 4. Are you adequately informed by the Department of changes to and interpretations of the Department's positions, policies, rules, and laws?**

<b>Yes</b>	<b>8</b>	<b>47%</b>
No	4	24%
Unknown	3	18%
No opinion	2	11%

- 5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>17</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No opinion	0	0%

**6. Do you consider mandatory continuing education necessary for competent practice?**

Yes	13	76%
No	1	6%
Unknown	1	6%
No opinion	2	12%

**7. Has the Department approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

Yes	13	76%
No	2	12%
Unknown	1	6%
No opinion	1	6%

**8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?**

**Respondent 2** – “Limited access to companies in the group health business.”

**Respondent 3** – “I think the state of Alabama should ban the existence of non-insurance company entities that are providing insurance type products through the guise of business/public entity associations. They are not regulated by the State and have the capability of performing certain acts that are prohibited for Insurance Agents and their Companies. I would like to discuss this matter further with your staff. I also think the state should do a better job of policing excess line brokers and their fee structures.”

**Respondent 4** – “I am a non-resident license holder.”

**Respondent 5** – “The involvement of the Federal Government in state issues. I am not sure what the Department is doing in regards to Federal's overriding state rights.”

**Respondent 6** – “Ensuring ALL sales staff or licensed prior to selling any product. Lawyers being allowed to advertise to the public that one should contact them first before calling in a claim.”

**Respondent 8** – “Not that many Medicare products offered there.”

**Respondent 9** – “Nothing”

**Respondent 10** – “Way too many agents, advisers, etc., that don't have a clue about what they are doing. Much, much more training & certification is needed.”

**Respondent 12** – “Some companies do not have licensed staff but their staff are doing the same job as licensed staff at companies and agencies who comply with the licensing of all sales personnel.”

**Respondent 15** – “Being honest and doing the best for all clients.”

Did Not Respond 7

**9.**

**10. Do you think the Department and its staff are satisfactorily performing their duties?**

<b>Yes</b>	<b>12</b>	<b>70%</b>
No	1	6%
Unknown	1	6%
No Opinion	3	18%

**11. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?**

Yes	0	0%
<b>No</b>	<b>16</b>	<b>94%</b>
Unknown	0	0%
No Opinion	1	6%



**Service Representative Questionnaire**

Surveys were sent to 100 licensees of whom 3 responded. The percentages shown are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>3</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No Opinion	0	0%

**2. Do you think any of the Department's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	0	0%
<b>No</b>	<b>3</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

**3. Do you think any of the Department's requirements are irrelevant to the competent practice of your profession?**

Yes	0	0%
<b>No</b>	<b>3</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

**4. Are you adequately informed by the Department of changes to and interpretations of the Department's positions, policies, rules, and laws?**

<b>Yes</b>	<b>2</b>	<b>67%</b>
No	1	33%
Unknown	0	0%
No opinion	0	0%

**5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>3</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No opinion	0	0%

**6. Do you consider mandatory continuing education necessary for competent practice?**

<b>Yes</b>	<b>3</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No opinion	0	0%

**7. Has the Department approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

<b>Yes</b>	<b>3</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No opinion	0	0%

**8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?**

**Respondent 2** – “The mandatory law of liability insurance on all automobiles is not enforced. The SR13 form is a great tool in the situation of an accident. One thing that our office has noticed is when you go to the County Court house to get your car tag evidence of insurance on that car is not required.”

**Respondent 3** – “Legislation regarding insurance is sometimes offered for a vote without clear explanation to the public masses. I am in favor of regulation of my profession to keep its office ethical, but feel that there should be more information provided to the public about what restrictions are placed on our profession.”

Did Not Respond 1

**9. Do you think the Department and its staff are satisfactorily performing their duties?**

Yes	1	33.3%
No	0	0%
Unknown	1	33.3%
No Opinion	1	33.3%

**Respondent 2** – “The people who work in the office of Mandatory Liability Insurance are awesome. I have had to contact them on behalf of some insured's and they are wonderful people to work with.”

**Respondent 3** – “The only duties I am aware of there being are license renewal and continuing education. Perhaps our professional should be educated on what the Departments responsibilities are beyond these.”

**10. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?**

Yes	0	0%
<b>No</b>	<b>3</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

**Adjuster Questionnaire**

Surveys were sent to 100 licensees of whom 10 responded. The percentages shown are based on the number who responded to the question.

- 1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>6</b>	<b>60%</b>
No	3	30%
Unknown	1	10%
No Opinion	0	0%

**Respondent 6** – “Make sure no criminals are employed in the business.”

- 2. Do you think any of the Department’s laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	0	24%
<b>No</b>	<b>6</b>	<b>60%</b>
Unknown	2	20%
No Opinion	2	20%

- 3. Do you think any of the Department’s requirements are irrelevant to the competent practice of your profession?**

Yes	1	10%
<b>No</b>	<b>8</b>	<b>80%</b>
Unknown	1	10%
No Opinion	0	0%

- 4. Are you adequately informed by the Department of changes to and interpretations of the Department’s positions, policies, rules, and laws?**

<b>Yes</b>	<b>6</b>	<b>60%</b>
No	2	20%
Unknown	1	10%
No opinion	1	10%

- 5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>10</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No opinion	0	0%

**6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?**

**Respondent 2** – “Gentlemen, there is no purpose in the regulation of this profession by the State. The services are not conducted for the public. The work is entirely on behalf of insurance companies. These companies have on staff experts in their industry, with sophisticated, highly trained professionals evaluating the work product I deliver. Regulation by the State has no relevance to the conduct of business between those individuals or businesses in my profession with the insurance company clients, and certainly does not provide a source or method of protection to the public at large in our State.”

**Respondent 3** – “Fairness”

**Respondent 4** – “Weather-related risk. Alabama wind pool.”

**Respondent 5** – “The economy.”

**Respondent 9** – “Lack of work”

**Respondent 10** – “Not aware of any issues.”

Did Not Respond 4

**7. Do you think the Department and its staff are satisfactorily performing their duties?**

<b>Yes</b>	<b>8</b>	<b>80%</b>
No	0	0%
Unknown	2	20%
No Opinion	0	0%

**8. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?**

Yes	0	0%
<b>No</b>	<b>9</b>	<b>90%</b>
Unknown	1	10%
No Opinion	0	0%

**Managing General Agent Questionnaire**

Surveys were sent to 28 licensees of whom 11 responded. The percentages shown are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>8</b>	<b>73%</b>
No	1	9%
Unknown	2	18%
No Opinion	0	0%

**2. Do you think any of the Department's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	3	27%
<b>No</b>	<b>6</b>	<b>55%</b>
Unknown	2	18%
No Opinion	0	0%

**Respondent 3** – “The lack of clarity on jurisdictions pertaining to boundaries inside and outside a state when a policy is sold by an agent. The request of direct gross written premium on sales nationwide instead of sales within the state.”

**3. Do you think any of the Department's requirements are irrelevant to the competent practice of your profession?**

Yes	3	27%
<b>No</b>	<b>5</b>	<b>46%</b>
Unknown	2	18%
No Opinion	1	9%

**4. Are you adequately informed by the Department of changes to and interpretations of the Department's positions, policies, rules, and laws?**

<b>Yes</b>	<b>5</b>	<b>46%</b>
No	2	18%
Unknown	3	27%
No opinion	1	9%

**5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>10</b>	<b>91%</b>
No	1	9%
Unknown	0	0%
No opinion	0	0%

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?

**Respondent 2** – “The changes in the Healthcare Form. The clarity for licenses, managing general agents and individuals.”

**Respondent 3** – “Uninsured motorist”

**Respondent 11** – “Insurance Rule Changes - Maybe email notification can be set up to notify companies of changes. Many states already have this in place.”

Did Not Respond

8

7. Do you think the Department and its staff are satisfactorily performing their duties?

<b>Yes</b>	<b>9</b>	<b>82%</b>
No	0	0%
Unknown	2	18%
No Opinion	0	0%

8. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?

Yes	0	0%
<b>No</b>	<b>11</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

**Title Insurance Agent Questionnaire**

Surveys were sent to 100 licensees of whom 9 responded. The percentages shown are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>6</b>	<b>67%</b>
No	3	33%
Unknown	0	0%
No Opinion	0	0%

**2. Do you think any of the Department's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	0	0%
<b>No</b>	<b>7</b>	<b>78%</b>
Unknown	2	22%
No Opinion	0	0%

**3. Do you think any of the Department's requirements are irrelevant to the competent practice of your profession?**

Yes	0	0%
No	3	33%
<b>Unknown</b>	<b>6</b>	<b>67%</b>
No Opinion	0	0%

**4. Are you adequately informed by the Department of changes to and interpretations of the Department's positions, policies, rules, and laws?**

Yes	1	11%
<b>No</b>	<b>4</b>	<b>45%</b>
Unknown	2	22%
No opinion	2	22%

**5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>6</b>	<b>67%</b>
No	0	0%
Unknown	0	0%
No opinion	3	33%



6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?

**Respondent 2** – “Licensing, residency, and continuing ed. for title insurance agents. Proposed act under review for 2012 Legislative Session. Implementation of recently passed CPL bill is also important.”

**Respondent 6** – “Back log of court system”

**Respondent 8** – “As a real estate attorney, I think that the solo practitioner is being squeezed out by those firms that have lobby connections and are able to get monopoly arrangements on closings involving government entities such as Fannie Mae and Freddie Mac. Don't think this is in the realm of the Department to address but it is a major concern of mine.”

Did Not Respond

6

7. Do you think the Department and its staff are satisfactorily performing their duties?

<b>Yes</b>	<b>7</b>	<b>78%</b>
No	0	0%
Unknown	1	11%
No Opinion	1	11%

8. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?

Yes	0	0%
<b>No</b>	<b>9</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

**Surplus Line Broker Questionnaire**

Surveys were sent to 100 licensees of whom 31 responded. The percentages shown are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>25</b>	<b>81%</b>
No	2	6%
Unknown	0	0%
No Opinion	4	13%

**2. Do you think any of the Department's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	7	23%
<b>No</b>	<b>15</b>	<b>48%</b>
Unknown	2	6%
No Opinion	7	23%

**Respondent 1** – “As respects the unfair taxing of Ocean Marine when using admitted carriers when SL carriers have no tax to pay and no real regulations or license requirement!”

**Respondent 7** – “I am just applying for Surplus Lines License for our agency. So I have not read all the laws, rules and policies yet.”

**3. Do you think any of the Department's requirements are irrelevant to the competent practice of your profession?**

Yes	10	32%
<b>No</b>	<b>14</b>	<b>45%</b>
Unknown	3	10%
No Opinion	4	13%

**Respondent 1** – “As relates to out of state SL producers not being licensed and Ocean Marine not subject to SL Tax. I do not know any other state that allows this!!! I have brought this up in years past with no help or support from state.”

**Respondent 11** – “Continuing Education requirements with respect to P&C agents, and possibly others, should be waived after a specified number of years.”

**4. Are you adequately informed by the Department of changes to and interpretations of the Department's positions, policies, rules, and laws?**

<b>Yes</b>	<b>19</b>	<b>61%</b>
No	7	23%
Unknown	3	10%
No opinion	2	6%

**Respondent 1** – “Needs a newsletter like other states.”

**Respondent 11** – “Not that I am aware of”

**Respondent 12** – “We never got any notice of what the state intended to do in response to the NRRRA law.”

**Respondent 27** – “E-mailed bulletins would be helpful for the most up to date information and changes.”

**5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>29</b>	<b>94%</b>
No	0	0%
Unknown	0	0%
No opinion	2	6%

**Respondent 7** – “Just started the process.”

**6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?**

**Respondent 1** – “I produce ocean marine using mainly admitted carriers. However when I use surplus lines market no tax is charged! I lose business to out of state agents that do not use Alabama agent, charge no tax and file not reports. All other states require me to! Doing? NOTHING”

**Respondent 5** – “The availability of affordable wind coverage for coastal areas.”

**Respondent 6** – “I think the details and implementation of the NRRRA legislation need to be hammered out, but that's not exclusive to Alabama, that affects all states. Alabama seems to be handling things as well as any other jurisdiction.”

**Respondent 8** – “I believe that my profession faces too much regulation. When you consider that insurance agents and brokers have to comply with separate laws and requirements in each of the states in which they operate, you realize how costly and cumbersome the process is. I wish that states, not just AL, would figure out a way to make the process more streamlined and efficient.”

**Respondent 12** – “No on-line filing and still requiring paperwork to be notarized”

**Respondent 13** – “over regulation and extra regulatory expense from many individuals with no business experience and a huge investment in union benefits”

**Respondent 19** – “Surplus Lines Taxes/Fees”

**Respondent 20** – “I think the NRRA is the most significant issue at this time. The implementation of the new rules has been a nightmare across the board. The fact that every state is interpreting and implementing their interpretation differently is causing problems throughout our industry.”

**Respondent 21** – “Uniformity in surplus lines laws. Why can't the states get together on this?”

**Respondent 28** – “There is a movement to address rate increases and insurance availability by market intervention. The Dept. is involved in this, as it should be, but needs to be very careful that any changes do not have the unintended effects of carrier withdrawal, coverage restriction, and rate increases.”

**Respondent 31** – “ability to file policies”

Did Not Respond

20

**7. Do you think the Department and its staff are satisfactorily performing their duties?**

<b>Yes</b>	<b>24</b>	<b>78%</b>
No	1	3%
Unknown	0	0%
No Opinion	6	19%

**Respondent 1** – “No, they ignore the loss of SL tax on Ocean Marine Business and I lose business as admitted carrier has to pay tax for Ocean Marine and SL Brokers from other states have an unfair advantage. I have to collect and pay SL tax in other states and be licensed for SL!”

**Respondent 23** – “I love [REDACTED] as he is very helpful.”

**8. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?**

Yes	0	0%
<b>No</b>	<b>31</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

**Reinsurance Intermediary Questionnaire**

Surveys were sent to 29 licensees of whom 4 responded. The percentages shown are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

Yes	1	25%
<b>No</b>	<b>3</b>	<b>75%</b>
Unknown	0	0%
No Opinion	0	0%

**Respondent 3** – “I think a Federal regulator of insurance producers would suffice to the multitude of varying rules in 50 states and territories.”

**2. Do you think any of the Department’s laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	1	25%
<b>No</b>	<b>2</b>	<b>50%</b>
Unknown	0	0%
No Opinion	1	25%

**Respondent 3** – “Same comment as above--either make one regulator or make one set of common rules for all states. What’s the purpose of the NAIC if you can’t agree with each other?”

**3. Do you think any of the Department’s requirements are irrelevant to the competent practice of your profession?**

Yes	1	25%
<b>No</b>	<b>2</b>	<b>50%</b>
Unknown	0	0%
No Opinion	1	25%

**4. Are you adequately informed by the Department of changes to and interpretations of the Department’s positions, policies, rules, and laws?**

Yes	1	25%
No	0	0%
Unknown	0	0%
<b>No opinion</b>	<b>3</b>	<b>75%</b>

**5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>4</b>	<b>100%</b>
No	0	0%
Unknown	0	0%
No opinion	0	0%

**Respondent 3** – “The cost was so high and I had no business prospects that I chose to discontinue renewals.”

**6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?**

**Respondent 3** – “The cost and the over-regulation.”

Did Not Respond 3

**7. Do you think the Department and its staff are satisfactorily performing their duties?**

<b>Yes</b>	<b>2</b>	<b>50%</b>
No	1	25%
Unknown	0	0%
No Opinion	1	25%

**Respondent 3** – “No, see prior answers.”

**Respondent 4** – “Yes, there are some areas that they take a little longer in performing but overall they are doing well.”

**8. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?**

Yes	0	0%
<b>No</b>	<b>4</b>	<b>100%</b>
Unknown	0	0%
No Opinion	0	0%

## **Pre-Need Sales Agent Questionnaire**

Surveys were sent to 100 licensees of whom 13 responded. The percentages shown are based on the number who responded to the question.

### **1. Do you think regulation of your profession by the Department of Insurance is necessary to protect public welfare?**

<b>Yes</b>	<b>10</b>	<b>77%</b>
No	2	15%
Unknown	0	10%
No Opinion	1	8%

**Respondent 7** – “We trust our pre-need with insurance, and we feel the insurance companies are being audited so it feels like double jeopardy.”

**Respondent 13** – “The profession does need regulating. The law is passed said all funeral home and perpetual said cemeteries. The Department of Insurance came up with a COA. Those who did not get one are not checked and are doing as they please. Therefore, the people that needed protecting are not being protected and those that needed regulating are not being regulated.”

### **2. Do you think any of the Department’s laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	2	15%
<b>No</b>	<b>8</b>	<b>62%</b>
Unknown	1	8%
No Opinion	2	15%

**Respondent 3** – “I don’t think they follow thru with the rules that are in place.”

**Respondent 5** – “My only concern is that those that do not have a COA are not being audited or policed. They could be writing pre-need without a COA. For example, I recently helped a family who had written a pre-need in the state of Missouri. The state had shut down the facility who had written the pre-need because he had not trusted any of the money. The family lost all of their money. The attorney general’s office said that the family would probably not see any of the money that they had paid in. I believe that the people of Alabama should be able to pre-pay their funerals and have peace of mind that this kind of thing would not happen to them.”

**Respondent 13** – “The Department promised us some time ago that they would come out with a form to fill out on our financial statement. This has not been done and we’re still paying CPAs <illegible>-3,000 per year. It takes a week to check a firm that has written 35-40 contracts since the last audit that they made. This should be done in less than a day if contracted out rather than done by employees of the Department of Insurance. Each time they check it’s like they pull new regulations out of the air.

**3. Do you think any of the Department's requirements are irrelevant to the competent practice of your profession?**

Yes	1	8%
<b>No</b>	<b>8</b>	<b>62%</b>
Unknown	2	15%
No Opinion	2	15%

**Respondent 7** – “I think we should be regulated but not in the manner we are now.”

**Respondent 13** – “They regulate us as if we were large insurance companies and not Alabama funeral directors.”

**4. Are you adequately informed by the Department of changes to and interpretations of the Department's positions, policies, rules, and laws?**

Yes	4	31%
No	4	31%
Unknown	3	23%
No opinion	2	15%

**Respondent 3** – “I have not been given interpretation of how the preneed law will apply when a funeral is done by a funeral home that is not the beneficiary of the contract.”

**Respondent 7** – “It has been our experience that changes/interpretations are made regularly. Continuous changes in forms required for renewal.”

**Respondent 13** – “They should come up with a handbook for funeral directors and stop treating us if we were large insurance companies.”

**5. Has the Department performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>10</b>	<b>77%</b>
No	0	0%
Unknown	0	0%
No opinion	3	23%

**Respondent 7** – “After jumping through their hoops”

**Respondent 10** – “I have been a pre-need sales agent for less than 3 months and am currently taking courses to prepare for the life insurance exam. My insight and experience is consequently very limited.”



**6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Department doing to address the issue(s)?**

**Respondent 1** – “The need for only people who have been properly train should be allow to get license the fact that all you have to do is submit fee and you have license is no way to protect public from those who take advantage of people.”

**Respondent 3** – “When another funeral director WILL NOT allow a preneed contract to be transferred within the State of Alabama, the Department of Insurance doesn't help enforce the transfer option that is available to consumer.”

**Respondent 5** – “The policing of non COA holders. See the answer to question number 3. I hope that this department is looking into this matter.”

**Respondent 7** – “Reporting for renewal at April 1, each year when it could be July. Tax season is stressful enough. Also, having to pay thousands of dollars for an audit when the trustee has already been audited.”

**Respondent 8** – “I really don't have any complaints; I think the rules and laws are fair and adequate.”

**Respondent 12** – “Selling mostly Medicare Advantage Plans, my challenge is to stay compliant. I have gotten two section A's, but was innocent. I was very pleased with how my state handled their part in my answering of these accusations. I felt innocent until proven guilty, which I never was. Thanks”

**Respondent 13** – “Many funeral homes are not regulated by the Department of Insurance and they're doing nothing to correct it.”

Did Not Respond

6

**7. Do you think the Department and its staff are satisfactorily performing their duties?**

<b>Yes</b>	<b>6</b>	<b>46%</b>
No	1	8%
Unknown	4	31%
No Opinion	2	15%

**Respondent 3** – “Yes, most of the time, except for the issues I’ve stated above.”

**Respondent 13** – “No, they are not enforcing the law as it was passed. They have made up rules and regulations to suit their need and not enforced the law as passed.”

**8. Has any member of the Department staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Department service for you?**

Yes	0	0%
<b>No</b>	<b>12</b>	<b>92%</b>
Unknown	0	0%
No Opinion	1	8%

**Respondent 13** – “Their fees for audit are outrageous.”

**Complainant Survey**

Surveys were sent to 100 complainants of whom 15 responded. The percentages shown are based on the number who responded to the question.

**1. How was your complaint filed with the Alabama Department of Insurance?**

<b>Mail</b>	<b>7</b>	<b>46%</b>
Phone	1	7%
Fax	0	0%
Other	4	27%
Unknown	3	20%

**Respondent 2** – “I called and mailed complete documentation.”

**Respondent 3** – “I have never filed a complaint.”

**Respondent 4** – “I do not remember. It’s been several years.”

**Respondent 11** – “It was filed by mail.”

**Respondent 12** – “Filed by email”

**Respondent 13** – “Internet”

**2. Was receipt of your complaint promptly acknowledged?**

<b>Yes</b>	<b>8</b>	<b>53%</b>
No	4	27%
Unknown	3	20%

**Respondent 2** – “Acknowledged, but not resolved as an independent party. The Alabama Department of Insurance is apparently a division of the insurance companies doing business in the state of Alabama.”

**Respondent 4** – “I do not remember.”

**Respondent 6** – “This is the only reply I ever had.”

**Respondent 11** – “Never received an acknowledgement.”

**3. If your answer to Question 2 was “YES”, how long after you filed your complaint were you contacted by the Department?**

Immediately	2	25%
<b>Within 10 days</b>	<b>3</b>	<b>38%</b>
Within 20 days	2	25%
Within 30 days	1	12%
More than 30 days	0	0%
Unknown	0	0%

**Respondent 5** – “I had called prior to filing the complaint, so there was not a waiting time.”

**4. Was the person who responded to your complaint knowledgeable and courteous?**

Knowledgeable	0	0%
Courteous	2	13%
<b>Both</b>	<b>7</b>	<b>47%</b>
Neither	0	0%
Unknown	6	40%

**Respondent 2** – “Appeared to be unaware of the rules. Simply took what I provided (25 pages of documentation) and gave it to the insurance company to reply. After their reply, they accepted the insurance company's response as truth (which it was a total lie).”

**Respondent 4** – “I did receive a written response but it was not the answer to my question. I was trying to investigate a fraudulent supply of information but no actual investigation was done as to the validity of the insurance certificate supplied.”

**Respondent 6** – “There was no department employee that ever responded.”

**5. Did the Department communicate the results of investigating your complaint to you?**

<b>Yes</b>	<b>8</b>	<b>53%</b>
No	5	34%
Unknown	2	13%

**Respondent 2** – “The department communicated the insurance company's reply to me as their investigative result.”

**Respondent 4** – “The department advised me there was a policy in effect but not did not verify it's validity as a general liability policy.

**Respondent 11** – “Never heard from them.”

**6. Do you think the Department did everything it could to resolve your complaint?**

Yes	5	34%
<b>No</b>	<b>8</b>	<b>53%</b>
Unknown	2	13%

**Respondent 2** – “The department did nothing but tell me what the insurance company said in their reply. Basically told me there was nothing else I could do. This department of state government needs to either do their job or just close the department to save their cost. I would have been better off by not wasting my time filing the complaint.”

**Respondent 6** – “As far as I am aware, your department did absolutely nothing, ever!”

**Respondent 11** – “They did nothing”

**Respondent 12** – “Referred the matter to State Farm in Birmingham and had them call. State Farm gave me the same answer that the local State Farm secretary gave me initially.”

**7. Were you satisfied with your dealings with the Department of Insurance?**

Yes	5	34%
<b>No</b>	<b>7</b>	<b>46%</b>
Unknown	2	13%
No Opinion	1	7%

**Respondent 2** – “ABSOLUTELY NOT SATISFIED!!! The process taught me the cold hard facts about how the insurance industry controls the state regulators that are supposed to regulate them. The free market is working though, because I have told over 100 friends, family and associates the true facts about Allstate Insurance and the state's insurance regulating process. I think Allstate has lost MUCH more in revenue as a result of my telling so many people the truth about what they did to me than they saved (probably) by not paying my just and fair claim. I convinced 3 people (that I know of) to cancel their Allstate insurance, and I convinced one agent to leave Allstate as a result of their corrupt activity, and as a result of what they did to me.”

**Respondent 4** – “I would probably not waste my time again to contact the Department of Insurance for assistance.”

**Respondent 6** – “I tried to deal with D of I, but they did not want to deal with my problem.”

**Respondent 11** – “Very dissatisfied”

**Respondent 15** – “Outstanding service....resolved my problem getting my AFLAC policy reinstated following my divorce.”

# APPENDICES

## SMART Quarterly Performance Reports

Thursday, November 18, 2010  
EBO Form 10

### FY 10 SMART Quarterly Performance Report

Page 2 of 5

#### Basic Agency

Agency: 038 - Insurance Department				Program: 041 - REGULATORY SERVICES								
Organization: -				Activity: -								
Key Goal:												
Goal 1	To resolve 100% of consumer inquiries and complaints within 60 days by FY14.								Governor's Priority:		4	
Objectives and Quarterly Targets:												
Performance Measures			First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives		Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Efficiency) % of cases resolved within 60 days.		%	--	88%	--	89.75%	--	93.94%	--	88.86%	Establish Baseline	90.14%

#### Item # Notes

O1- Due to programming difficulties, the percentage of inquiry completion is estimated at 100%, which resulted in an complaint/inquiry closure rate with 60 days to 88 %. The complaint closure rate within 60 days for the reporting period was 71%. Going forward, the Department will alter the goal to measuring only the complaint closure rate within 60 days. This accurately reflects the true mission of the Department's consumer services function.

Agency: 038 - Insurance Department					Program: 041 - REGULATORY SERVICES							
Organization: -					Activity: -							
Key Goal:												
Goal 2	Respond to 100% of citizen complaints within 24 hours by FY14.								Governor's Priority:	4		
Objectives and Quarterly Targets:												
Performance Measures			First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives		Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Efficiency) Percentage of cases responded to within 24 hours.		%	--	100%	--	100%	--	100%	--	100%	Establish Baseline	100%

Agency: 038 - Insurance Department				Program: 041 - REGULATORY SERVICES								
Organization: -				Activity: -								
Key Goal:												
Goal 3	Maintain 100% examination completion rate within 18 months "as of" date in compliance with NAIC standards by FY14.								Governor's Priority:	4		
Objectives and Quarterly Targets:												
Performance Measures			First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives		Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Efficiency) 100% completed examinations within 18 months		%	--	100%	--	100%	--	100%	--	100%	100%	100%

## FY 11 SMART Quarterly Performance Report

### Basic Agency

Agency: 038 - Insurance Department				Program: 041 - REGULATORY SERVICES								
Organization: -				Activity: -								
Key Goal:												
Goal 1	Protect the public from unfair and illegal practices involving insurance by regulating persons engaged in the sale of insurance by providing counseling and assistance to the public and by monitoring compliance with state laws and through competent regulation of rates and policies for insurance and pre-need markets.								Governor's Priority:		4	
Objectives and Quarterly Targets:												
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual		
Objectives		Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Efficiency) Complete the licensing process in prompt fashion.		Licenses processed in 3 days	100.00	100.00	100.00	100.00	100.00		100.00		100.00	
(O2-Quality) To respond in a timely fashion to consumer inquiries and complaints		Percentage of cases resolved within 60 days	90.00	91.87	90.00	92.70	90.00		90.00		90.00	
(O3-Quality) Provide access to markets for the newest insurance products through timely rate/policy approval process		Percentage of rates/forms reviewed within 30 days	99.00	99.90	99.00	99.77	99.00		99.00		99.00	
* Actual performance data is not currently available for this quarter.												

Agency: 038 - Insurance Department				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 2	To efficiently ensure that insurers and other regulated entities doing business in Alabama are financially sound and in compliance with applicable law.								Governor's Priority:		3
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Timely complete examinations of insurance companies.	Examinations completed w/i 18 mos. of "as of" date	100.00	100.00	100.00	100.00	100.00		100.00		100.00	
(O2-Quality) Timely and accurate collection of insurance premium tax.	Audits/refunds completed by March 1	100.00	N/A	100.00	N/A	100.00		100.00		100.00	
* Actual performance data is not currently available for this quarter.											

**Item #      Notes**

O1- Two completed within 18 months from "as of" date.

O2- Since the unit of measure is audits/refunds completed by March 1, this can only be furnished annually.

Agency: 038 - Insurance Department				Program: 041 - REGULATORY SERVICES							
Organization: -				Activity: -							
Key Goal:											
Goal 3	Protect the public from loss of life and property due to fire or explosion								Governor's Priority:		4
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Respond to citizen complaints or requests in a timely fashion	Percentage of cases responded w/in 24 hours	100.00	100.00	100.00	100.00	100.00		100.00		100.00	
(O2-Efficiency) Rapidly respond to requests for arson investigations	Percentage responded within 2 hours	100.00	100.00	100.00	100.00	100.00		100.00		100.00	
* Actual performance data is not currently available for this quarter.											

### **Current Statutes**

The statutory authority for the Department of Insurance is too voluminous for inclusion in this report. Please refer to the *Code of Alabama 1975*, Title 27 – Insurance.



## **Commissioners**

### COMMISSIONERS OF INSURANCE 1986 - PRESENT

<b><u>TERM</u></b>	<b><u>COMMISSIONER</u></b>	<b><u>GOVERNOR</u></b>
01/17/2011 to Present	Jim L. Ridling	Robert Bentley
09/15/2008 to 01/16/2011	Jim L. Ridling	Bob Riley
09/01/08 to 09/14/08	D. David Parsons	Bob Riley
1/21/03 to 08/31/2008	Walter A. Bell	Bob Rilev
1/1'8/99 to 1/20/03	D. David Parsons	Don Siegelman
2/1/98 to 1/18/99	Richard H. Cater	Fob James, Jr.
1 16/95 to 1/31/98	Michael DeBellis	Fob James, Jr.
5 5 93 to 1 16/95	James H. Dill	Jim Folsom
8 5 88 to 5 4/93	Mike Weaver	Guy Hunt
2 6 87 to 8 5/88	John S. Greeno	Guy Hunt
1/19/87 to 2/6/87	James M. Dunn	Guy Hunt
1 14/87 to 1/18/87	Nelson Burnett	George C. Wallace
1 1/86 to 1/13/87	Michael DeBellis	George C. Wallace

## **RESPONSE TO SIGNIFICANT ISSUES**



ROBERT BENTLEY  
GOVERNOR

JIM L. RIDLING  
COMMISSIONER

STATE OF ALABAMA  
DEPARTMENT OF INSURANCE  
201 MONROE STREET, SUITE 502  
POST OFFICE BOX 303351  
MONTGOMERY, ALABAMA 36130-3351  
TELEPHONE: (334) 269-3550  
FACSIMILE: (334) 241-4192  
INTERNET: [www.aldoi.gov](http://www.aldoi.gov)

DEPUTY COMMISSIONER  
CHARLES M. ANGELL (acting)

CHIEF OF STAFF  
RAGAN INGRAM

CHIEF EXAMINER  
RICHARD L. FORD

STATE FIRE MARSHAL  
EDWARD S. PAULK

GENERAL COUNSEL  
REYN NORMAN

September 26, 2011

Mr. John Norris  
Director, Operational Division  
Examiners of Public Accounts  
Post Office Box 302251  
Montgomery, Alabama 36130-2251

RE: Department of Insurance  
Sunset Committee Report

Dear Mr. Norris:

In accordance with your letter to me dated September 26, 2011, attached please find this Department's responses to the significant items identified in the last sunset report prepared by your office for the Sunset Committee.

Please let me know if anything further is needed.

Very truly yours,

  
Jim L. Ridling  
Commissioner of Insurance

JLR/RN/gt

Enclosure

EQUAL OPPORTUNITY EMPLOYER

### **SIGNIFICANT ITEMS**

#### **Significant Issue 2011-01 – Act 2011-637, Licensing of Independent Adjusters.**

The Department concurs with the findings of the examiner. We will promulgate appropriate rules and regulations properly implementing the new act.

#### **Significant Issue 2011-02 – Act 2011-536, Interstate Insurance Product Regulation Compact.**

The Department concurs with the findings of the examiner.

#### **Significant Issue 2011-03 – Act 2011-536, Surplus Lines Insurance Multi-State Compliance Act.**

The Department concurs with the findings of the examiner. The Governor has appointed the Alabama Commissioner of Insurance as Alabama's representative to the commission.

#### **Significant Issue 2011-04 – Charging fees without administrative rule.**

The Department concurs with the findings of the examiner. We will promulgate appropriate regulations adopting the indicated fees.

### **STATUS OF PRIOR FINDINGS**

#### **Prior Significant Issue 2000-02 - The Department of Insurance is not Carrying Out its Duties to Determine Insurance Agents' Criminal Histories**

...

While the Department concurs with the factual findings of the examiner, we respectfully disagree with the conclusion that we are not effectively carrying out our duty. With increased awareness of the duties and responsibilities placed back on insurers under the Insurance Fraud Prevention Act, 18 U.S. Code 1033, we believe insurers are doing a better job of screening their applicants before submitting them to us, plus we have added specific references to the federal act on our license applications. Additionally, beginning in 2005, we began conducting a limited search of public records on all new resident applicants for

license. Since 2006, we also conduct this search on all resident renewal applications.

In addition, as a part of the national uniformity effort among all states, we will seek to gain approval to collect fingerprints of all licensed insurance producers and conduct full background investigations.

Additionally, the 2011 Legislature passed a new Independent Adjuster licensing law (Act 2011-637), which includes authority to conduct background investigations, to include collecting fingerprints of licensees and obtain a state and FBI criminal history report. It is anticipated that once this process is implemented and working for independent adjuster licensees we will be better positioned to implement a similar law for insurance producers.

**Prior Significant Issue 2000-03 - Insurance Fraud Unit not in Place in Alabama ...**

The Department concurs with the findings of the examiner. We plan to work with interested parties to try to move legislation in the next session.

**Prior Significant Issue 2000-04 - Lack of Jurisdiction – Third Party Administrators.**

The Department concurs with the findings of the examiner. We have drafted legislation that can be introduced in a future session of the Legislature .

**Prior Significant Issue 2000-05 - Lack of Authority – Service Contractor Provider Agents.**

The Department concurs with the findings of the examiner. We have drafted legislation that can be introduced in a future session of the Legislature.

**Prior Significant Issue 2005-01 - Implementation of Alabama Preneed Funeral and Cemetery Act ...**

The Department concurs with the findings of the examiner. This department has been involved with the industry in drafting revisions to the law. These revisions would have addressed some of the issues and would have increased the criminal penalties. Although the bill was not

introduced in the 2011 session, it has been introduced in several prior sessions.

**Prior Finding 2007-01 – Improper fees collected by State Fire Marshal.**

**Item 1 – Permit Renewal Grace Period and Fee.**

The State Fire Marshal accepted the Examiners' comments. The regulation – specifically Rule 482-2-103-.01(c) – was amended to change the fee to \$100. The relevant forms have been changed as necessary.

**Item 2 – Skilled Worker Exemption.**

Amended Regulation 482-1-103-.01, effective November 22, 2010, also implements the “skilled worker” exemption specifically recognized by Ala. Code § 34-33-3 and prescribes a \$100 annual fee for a “skilled worker” certificate. The reason for both the since-discontinued “biennial test permit” approach and, now, the exemption approach is somewhat simple – system owners do not want to incur the added expense of engaging permitted contractors to do weekly pump tests and permitted contractors themselves are not interested in trying to provide weekly testing service.

Independent of the Act, the Fire Marshal has (i) the statutory duty of enforcing laws relating to “[i]nstallation and maintenance of automatic and other fire alarm systems and fire extinguishing equipment,” Ala. Code § 36-19-2(3); and (ii) the authority to “make regulations for fire prevention and protection of any construction or building, exists or other safety measures . . .” Ala. Code § 36-19-9. Insurance Department regulation 482-2-101 (specifically rule 482-2-101-.01), promulgated under the authority of § 36-19-9, adopts the National Fire Codes (2003 ed.) of the National Fire Protection Association. Chapter 8 of NFPA 25 imposes, as a code requirement, that fire pump assemblies be tested on a weekly basis with “[q]ualified operating personnel” in attendance [NFPA 25, subsection 8.3.2.1]. In other words, sprinkler system owners must provide for and, as necessary, document weekly fire pump testing in order to comply with the State’s fire codes.

Fire pump testing is within “the business of installation, repair, alteration, addition, maintenance, or inspection of fire protection sprinkler systems” for which a fire protection sprinkler contractor is licensed under the Act. See Ala. Code §§ 34-33-1(1), 34-33-3. A system owner can comply with the code testing requirement by engaging a

licensed fire protection sprinkler contractor to perform that testing. The fire codes, however, only require “qualified operating personnel,” not a contractor holding some form of State-issued permit. The Act itself does not require a contractor permit in this setting: the Act is inapplicable to “skilled workers” – of fire protection sprinkler system owners – “who regularly and routinely design, install, repair, alter, add to, maintain, and inspect sprinkler systems on and within the premises of their employer, provided such systems are for the owners’ use only.” Ala. Code § 34-33-3. So, a “skilled worker” can perform testing without the need to hold a permit as a fire protection sprinkler contractor and that worker’s employer can comply with the fire code testing requirements without separately engaging a permitted contractor.

The Examiners implicitly question the Fire Marshal’s authority to address the “skilled employee exemption” and explicitly conclude that the Fire Marshal has no legal authority to prescribe a fee for a “skilled worker exemption certificate.” Yet, “administration” of the Act is vested in the Fire Marshal. Ala. Code § 34-33-2. Though “administration” surely carries implied authority to enact reasonable regulations for purposes of administering and enforcing the Act, the Fire Marshal otherwise has statutory authority independent of the Act to “make regulations for fire prevention and protection of any construction or building, exits or other safety measures . . .” Ala. Code § 36-19-9. The “exemption certificate” does nothing more than evidence that the employee has the requisite knowledge, training, and skill to perform weekly pump testing. It accomplishes two purposes – it documents that such workers are the “qualified operating personnel” required under the fire codes to do the pump testing and it administers the Act’s provision that the Act does not apply to “skilled workers” (so those “qualified operating personnel” need not be permitted contractors). The Act itself is nothing but a specific aspect of “fire prevention and protection of any construction or building, exits or other safety measures” as expressed in § 36-19-9. We are confident that the “skilled employee exemption” now defined and implemented by rule 482-1-103-.02 is within the Fire Marshal’s legal authority taking all cited Code sections together. The Act does not define a “skilled worker,” so this is certainly within the Fire Marshal’s discretion as a matter of rule-making.